

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 vs. NO: CR-15-4268 JB

6 ANGEL DELEON, et al.,

7 Defendants.

8 VOLUME 9

9 Transcript of Jury Trial before The Honorable
10 James O. Browning, United States District Judge, Las
11 Cruces, Dona Ana County, New Mexico, commencing on
12 February 8, 2018.

13 For the Plaintiff: Ms. Maria Armijo, Mr. Randy
14 Castellano, Mr Matthew Beck

15 For the Trial 1 Defendants: Ms. Amy Jacks,
16 Mr. Richard Jewkes, Ms. Theresa Duncan, Mr. Marc
17 Lowry, Ms. Carey Bhalla, Mr. Bill Maynard, Mr. Ryan
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1 THE COURT: All right. Well, let's go on
2 the record. Good morning, everyone. I appreciate
3 everybody being here and on time and ready to go.
4 Is there anything we need to discuss before we bring
5 the jury in? Anything I can do for you, Mr. Beck,
6 Mr. Castellano, Ms. Armijo?

7 MR. VILLA: Briefly, Your Honor.

8 MR. BECK: Not from us, Your Honor.

9 MR. VILLA: After Mr. Beck.

10 THE COURT: I'm going to go ahead and have
11 them bring the witness up, unless there is something
12 particular to this witness.

13 MR. VILLA: No, Your Honor. But yesterday
14 we admitted Defendants' EV, EW and EX. Those were
15 black-and-white photos of shanks recovered from Mr.
16 Rodriguez. And we've replaced those with color
17 versions.

18 THE COURT: Okay. All right. Any
19 objection to that?

20 MS. ARMIJO: No, Your Honor.

21 THE COURT: Any objection from the
22 defendants? All right. So same numbers, but we'll
23 just replace them with color.

24 Did y'all see -- did anybody see Mr.
25 Rodriguez' attorney out there? Mr. Hernandez? Is

1 that his attorney? Santiago?

2 MR. VILLA: Yes, Your Honor. I haven't
3 seen him.

4 MR. LOWRY: I'll look for him.

5 THE COURT: He's wanting to talk to his
6 attorney before he comes into the room. Can y'all
7 maybe help rustle him up?

8 MS. ARMIJO: I haven't seen him. He
9 hasn't responded yet. I just now texted him. He'll
10 be here around 8:30.

11 THE COURT: We're having a little problem
12 with the monitors over there. I understand it's not
13 unique to our courtroom, but the jurors' monitors.
14 So they sent me a note and they're doing the right
15 thing with it. So I'm going to mark the note from
16 the jurors as G, and I'll talk to the jurors about
17 their monitors to make sure they know how to keep
18 them working during the trial.

19 Anything else from the Government that we
20 need to discuss? Anything else I can do for you
21 this morning?

22 MR. BECK: No, Your Honor.

23 THE COURT: How about from the defendants?
24 Do you have anything else, Mr. Villa?

25 MR. VILLA: I don't, Your Honor.

1 THE COURT: Okay. Mr. Herrera, Mr. Baca.

2 MR. LOWRY: Your Honor, we were just
3 reviewing the jury instructions last night, but I
4 take it it's a work in progress.

5 THE COURT: Yeah, I took them home, too.
6 I did work till 11:00, 11:30 last night. So I
7 probably will not get you another set today, but I'm
8 going to try to sit up here and make some progress
9 on it and have you a set in the morning. So that's
10 kind of my goal on that.

11 Did you have any thoughts as you went
12 through them?

13 MR. LOWRY: Just the absence of the
14 defenses, but I think it's something you're working
15 on.

16 THE COURT: It is.

17 MR. LOWRY: And just as evidence comes in.
18 And I detect from the email that you're still
19 working on the assault portion of the VICAR counts.

20 MR. CASTELLANO: Your Honor, Mr. Hernandez
21 is here.

22 THE COURT: All right. Mr. Hernandez. Do
23 you want to talk to your client? He wants to talk
24 to you.

25 MR. HERNANDEZ: Good morning, Your Honor.

1 THE COURT: Good morning.

2 MR. HERNANDEZ: Judge, I'll talk to him.

3 THE COURT: Is he ready to go?

4 MR. HERNANDEZ: Yes.

5 THE COURT: Is he okay?

6 MR. HERNANDEZ: Yes, Judge.

7 THE COURT: He's ready to go?

8 MR. HERNANDEZ: Yes, Your Honor.

9 THE COURT: All right, Mr. Rodriguez, did
10 you get a chance to talk to your attorney? You're
11 okay? Ready to go?

12 THE WITNESS: Yes.

13 THE COURT: Okay, all rise.

14 (The jury entered the courtroom.)

15 THE COURT: All right. Everyone be
16 seated.

17 Good morning, ladies and gentlemen. Thank
18 you for being back on time and ready to go. You've
19 been a wonderful bunch to work with on that. Y'all
20 have been super about being here and ready to go,
21 and I appreciate the attorneys and the parties as
22 well being here. Everybody has been good to get to
23 the courthouse and be here on time so we could be
24 ready to go.

25 I did have a question last night about the

1 monitors, that they're only working part of the
2 time, and you're having to unplug the HDML card and
3 plug it back in to get it to respond. We've talked
4 to IT, and this is a problem we're having throughout
5 the district. It's not so much a problem with the
6 Court's equipment. It's the vendor that I think is
7 the problem here, and so we're working with it
8 district-wide. But if you do have a problem, you're
9 doing the right thing. That's all we're doing, too,
10 is when we get that -- when we have that problem, we
11 just have to unplug it and then plug it back in to
12 get it to respond. And I take it that it is
13 responding; right? That was our test last night and
14 this morning. So just keep it up. We'll continue
15 to work with the vendor on that, but you're doing
16 the right thing, and so we'll just have to continue
17 to work with it. But we'll be monitoring it as the
18 week goes on to make sure we eliminate any problem.

19 All right, Mr. Rodriguez, I remind you
20 that you're still under oath.

21 THE WITNESS: Yes, sir.

22 THE COURT: Mr. Villa, if you wish to
23 continue your cross-examination of Mr. Rodriguez,
24 you may do so at this time.

25 MR. VILLA: Thank you, Your Honor.

1 THE COURT: Mr. Villa.

2 MARIO RODRIGUEZ,

3 after having been previously duly sworn under
4 oath, was questioned, and continued testifying
5 as follows:

6 CONTINUED CROSS-EXAMINATION

7 BY MR. VILLA:

8 Q. Good morning, Mr. Rodriguez.

9 A. Good morning.

10 Q. I think when we left off yesterday, I was
11 going to show you Government's Exhibit 73. It's
12 already been admitted into evidence. Mr. Rodriguez,
13 this is a rope that I'll represent to you Agent
14 Rhoades of the State Police testified was found in
15 Javier Molina's room. Have you ever seen that rope
16 before?

17 A. No, sir.

18 Q. Let me show you the actual rope itself.

19 MR. VILLA: May I approach?

20 THE COURT: You may.

21 BY MR. VILLA:

22 Q. Mr. Rodriguez, I'm showing you
23 Government's Exhibit 4 which has already been
24 admitted into evidence as the same rope as in the
25 picture.

1 A. Okay.

2 Q. You have never seen that before?

3 A. I don't recall seeing that before.

4 Q. So Mr. Rodriguez, you didn't take that
5 rope with you into Mr. Molina's room when you were
6 going to help kill him?

7 A. No, sir.

8 Q. Now, you would agree with me when you did
9 the -- tried to do the hit on Alex Sosoya, you did
10 take a rope with you that time; right?

11 A. I did, sir.

12 Q. You had it in your shoe?

13 A. Yes, sir.

14 Q. And during the fight with Mr. Sosoya, you
15 were trying to take that out to use it?

16 A. Robert Martinez was trying to take it out
17 of my shoe.

18 Q. So he could strangle him?

19 A. So I can get his hands and tie them behind
20 his back, yes.

21 Q. To tie Mr. Sosoya's hands --

22 A. Right, yes.

23 Q. -- behind his back so you could kill him?

24 A. So we can continue to assault him, yes.

25 Q. Let me ask you about the shank that was

1 found in your shoe.

2 MR. VILLA: May I approach again, Your
3 Honor?

4 THE COURT: You may.

5 BY MR. VILLA:

6 Q. So Mr. Rodriguez, you remember
7 Government's 746?

8 A. I do.

9 Q. That was your shoe?

10 A. That was my shoe.

11 Q. And inside the shoe is where the shank
12 was?

13 A. Yes, sir.

14 Q. And you remember Government's Exhibit
15 746-A?

16 A. Which one is it?

17 Q. I'll show you here on the monitor.

18 A. That's the weapon that was in my shoe.

19 Q. That's the weapon in your shoe; correct?

20 A. Yes.

21 Q. When you described that weapon -- let's
22 see if I can get it in the box -- would you describe
23 that as an icepick?

24 A. Yes, sir.

25 Q. What's an icepick?

1 A. I think it comes from people who make ice,
2 to stab into the ice. That's just a description of
3 a thin shank.

4 Q. It's not necessarily from an icepick?

5 A. No, sir.

6 Q. That's the way you describe it?

7 A. That's the way --

8 Q. Hang on, Mr. Rodriguez, just so it's
9 easier for the court reporter, and so that you
10 understand my question.

11 A. Okay.

12 Q. That's the way you guys describe a thin
13 shank?

14 A. Yes, sir.

15 Q. Is that right?

16 A. Yes, sir.

17 Q. Now, this particular shank that was in
18 your shoe -- that's evidence related to the Molina
19 case, isn't it?

20 A. It was evidence inside the Molina case,
21 yes. Those were the shoes I was wearing the day of
22 the Molina case.

23 Q. Did you use this shank on Mr. Molina?

24 A. I never used that shank before.

25 Q. Never used it on anybody?

1 A. No, sir.

2 Q. Did you have it with you when you went to
3 Mr. Molina's room?

4 A. In my shoe, yes.

5 Q. Just in the shoe?

6 A. Yes, sir.

7 Q. But you didn't take it out?

8 A. No, sir.

9 Q. We talked, Mr. Rodriguez, a little bit
10 about your drug use when you were in the blue pod
11 and you said you used Suboxone daily; correct?

12 A. Yes, sir.

13 Q. Didn't you also use meth?

14 A. I used meth on occasion, yes.

15 Q. Meth is methamphetamine; right?

16 A. Yes, sir.

17 Q. When was the last time you used
18 methamphetamine?

19 A. I think that was the last time -- or the
20 first time I used methamphetamine in the last 16
21 years.

22 Q. When was that?

23 A. When I was in blue pod.

24 Q. In blue pod. And can you tell me the
25 month or the date?

1 A. I can't tell you the month or the date.

2 Q. Did you use it on the day of Mr. Molina's
3 murder?

4 A. No, sir.

5 Q. But you were using it at that time?

6 A. About maybe two months prior to the Molina
7 murder, yes.

8 Q. And you said on occasion. What's "on
9 occasion" to you?

10 A. What did I say occasion to?

11 Q. You would you used meth on occasion?

12 A. On one occasion, yes.

13 Q. Only one time?

14 A. One time. I used it -- I think it was
15 approximately four or five days straight.

16 Q. While you were in blue pod?

17 A. While I was in blue pod, yes.

18 Q. Now, we talked a little bit about you not
19 being happy with the SNM; correct?

20 A. That's correct.

21 Q. And one of the things that you aren't
22 happy about was, you thought that a lot of the
23 people in SNM were overweight, out of shape; right?

24 A. I think that's -- no, that's not true.

25 Q. So you didn't think that was a problem

1 with the SNM?

2 A. If they are, I don't know what that would
3 be a reason to be mad at the SNM for.

4 Q. Well, you thought a lot of folks were not
5 keeping good care of themselves, not staying in
6 shape, not being good soldiers?

7 A. No, that's not what I was upset with the
8 SNM over.

9 Q. Well, you certainly were upset because
10 some of the people you looked up to had gone and
11 joined the Government; right?

12 A. I think one person I looked up to joined
13 the Government, yes.

14 Q. That being Gerald Archuleta?

15 A. I did look up to Gerald Archuleta. I
16 didn't have the relationship I did with him as I did
17 with Robert Martinez.

18 Q. Okay. So let's do this one at time. You
19 looked up to Gerald Archuleta. Yes?

20 A. Not through a personal relationship, but
21 through his history of putting in work, yes.

22 Q. Putting in work for the SNM?

23 A. Yes.

24 Q. Do you know that Gerald Archuleta is
25 working for the Government?

1 A. I didn't believe it at the time, but yes,
2 I know now.

3 Q. You knew that before you went to work for
4 the Government.

5 A. I still didn't want to believe it at that
6 time.

7 Q. But you knew it?

8 A. I was told it, yes.

9 Q. And you saw it in discovery on your
10 tablet, didn't you?

11 A. I did -- the last time the tablet was
12 updated, I did see it.

13 Q. And you saw that before you went on
14 October 24 to talk to the Government and cooperate;
15 right?

16 A. I did.

17 Q. And I think you said you looked up to
18 Robert Martinez?

19 A. I did.

20 Q. Is that Robert Martinez who helped you
21 with the Alex Sosoya hit?

22 A. Yes, sir.

23 Q. And Mr. Martinez was cooperating against
24 you, wasn't he?

25 A. Correct.

1 Q. He was going to testify against you?

2 A. That's correct.

3 Q. You didn't like that?

4 A. I always came from the idea that I
5 understood why they left. I never held nothing
6 against them for it.

7 Q. Well, let me ask you this: You also
8 looked up to an individual, Juan Baca?

9 A. I don't even know Juan Baca.

10 Q. You don't know any Juan Baca?

11 A. Do you know how old I am?

12 Q. I'm asking you a question, Mr. Rodriguez,
13 whether you knew --

14 A. I never heard of Juan Baca until I read
15 the tablet.

16 Q. Let me finish my question before you do
17 your answer. Okay?

18 So your answer is: You never heard of
19 Juan Baca until you read the tablet?

20 A. Then and other carnals started telling me
21 about him at that time.

22 Q. You understood that Juan Baca was a leader
23 in the SNM?

24 A. From what I understand is, he's the one
25 that created the SNM.

1 Q. You understood that he also talked to the
2 Government?

3 A. He didn't talk to the Government. He did
4 a debrief.

5 Q. A debrief?

6 A. Yes.

7 Q. To Government officials.

8 A. I've never seen it.

9 Q. But you heard about it?

10 A. There's allegations, yes.

11 Q. And remember when we talked yesterday
12 about the meeting that had slipped your mind, but it
13 occurred November 16, 2017, when you went to see Ron
14 Sanchez?

15 A. Right.

16 Q. And you were there with Agent Acee?

17 A. I was.

18 Q. And a number of other individuals involved
19 in this case?

20 A. Yes, sir.

21 Q. And you talked to Ron Sanchez, didn't you,
22 about how the SNM was going to lose power because of
23 the federal indictment?

24 A. Right.

25 Q. And that was one of the reasons you were

1 trying to persuade him to work for the Government?

2 A. That's incorrect.

3 Q. Well, you agree you told him that about
4 the SNM going to lose power.

5 A. Eventually, yes. But that wasn't the
6 reason why I was persuading him to go. I was there
7 at his request.

8 Q. So you also told him, didn't you, Mr.
9 Rodriguez, that there's people in the SNM that are
10 overweight, and all these guys are fat and
11 overweight. You mentioned that to Mr. Sanchez?

12 A. If you could play the recording. I don't
13 recall that. I believe that there's a few
14 individuals that I disliked that were overweight,
15 yes.

16 Q. So you agree that you had that issue with
17 some individuals?

18 A. One individual.

19 Q. Just one?

20 A. Yes.

21 MR. VILLA: Your Honor, may I approach?

22 THE COURT: You may.

23 MR. VILLA: Your Honor, I'm going to email
24 Ms. Armijo a copy of this transcript that we just
25 received a couple of days ago.

1 THE COURT: Okay.

2 BY MR. VILLA:

3 Q. Just to set the stage a little, Mr.
4 Rodriguez, you agree that one of the things you were
5 talking to Mr. Sanchez about was working for the
6 Government?

7 A. One of the things that I spoke to him
8 about was working with the Government?

9 Q. Yes or no?

10 A. Who worked with the Government?

11 Q. Mr. Sanchez?

12 A. If he wanted to?

13 Q. Yes.

14 A. That's what he was there for. He wanted
15 to.

16 Q. So you talked to him about that?

17 A. Yes, I was there at his request.

18 MS. JACKS: Just so we're clear, we're
19 speaking about Ronald Sanchez; correct?

20 THE WITNESS: That's correct.

21 BY MR. VILLA:

22 Q. So Mr. Rodriguez, I'm showing you a
23 document called "Transcript of me", right?

24 A. Right.

25 Q. And it says, "FBI Agent Bryan Acee, Mark

1 Myers, Nancy Stemo, Sergio Sapien, Mario Rodriguez,
2 and Ronald Sanchez"; right?

3 A. Right.

4 Q. Dated November 16, 2017?

5 A. Yes, sir.

6 Q. That's the same date you had that meeting?

7 A. That's the same day.

8 Q. Everybody I just read there was there at
9 that meeting?

10 A. They were present, yes.

11 Q. So I'm going to flip over to page 24, and
12 this is you talking to Ronald Sanchez. And you say,
13 "You know, their name isn't, fuck (indiscernible).
14 You've got Arturo. He's 50 now, overweight like a
15 motherfucker. All these guys are fat and
16 overweight."

17 Did I read that right?

18 A. Yes.

19 Q. You said that to Ronald Sanchez?

20 A. I said that to Ronald Sanchez.

21 Q. Mr. Rodriguez, I didn't do this yesterday,
22 but I'd like to show you the judgments from your
23 criminal cases.

24 MR. VILLA: Your Honor, I'm going to mark
25 these as AK-1, -2, and -3. They're certified

1 copies. I've shown them to Ms. Armijo. I'm not
2 certain whether she intends to object.

3 THE COURT: Any objection, Ms. Armijo?

4 MS. ARMIJO: No. Part of them may be
5 cumulative, because I believe this is part of the
6 pen pack that we admitted yesterday. So I do not
7 oppose this. It's just cumulative.

8 THE COURT: All right. Any of the
9 defendants object to it?

10 MS. JACKS: No, Your Honor.

11 THE COURT: All right. So Defendants'
12 Exhibit AK-1, AK-2, and AK-3 will be admitted into
13 evidence.

14 (Defendants' Exhibits AK-1, AK-2, and AK-3
15 admitted.)

16 MR. VILLA: May I approach? Actually, I
17 can do it from the document viewer.

18 BY MR. VILLA:

19 Q. So Mr. Rodriguez, can you see there on
20 your screen Defendant's Exhibit AK-1?

21 A. Say again?

22 Q. Can you see on your screen Defendants'
23 AK-1?

24 A. I see it.

25 Q. And that's a judgment and commitment for

1 you; correct?

2 A. The same one we went over yesterday, yes.

3 Q. And that's the one from June 2, 2004;

4 correct?

5 A. Yes, sir.

6 Q. And we went over this yesterday. It had
7 in there the kidnapping, and three counts of
8 criminal sexual penetration, as well as these other
9 charges, right?

10 A. And the fifth count was dismissed, but
11 yes, there's three counts there.

12 Q. Okay. So let me show you Defendants'
13 Exhibit AK-2. This is an amended judgment and
14 commitment in the same set of cases; right?

15 A. Let me see. I believe so.

16 Q. And I'll flip over to the second page of
17 that document. Now, it shows your convictions but
18 it doesn't have Count 5.

19 A. That's correct.

20 Q. So it still has Count 3 and Count 4;
21 correct?

22 A. As I told you, yes.

23 Q. And so it has Count 3, criminal sexual
24 penetration with a hot sauce bottle on Mr. Hardy?

25 A. That's correct.

1 Q. And Count 4, criminal sexual penetration
2 with a lotion bottle for Mr. Hardy; correct?

3 A. That's correct.

4 Q. And I think you testified on direct a
5 little bit about this. You said that you had
6 Mr. Hardy in a cell for a period of days and were
7 using his commissary money?

8 A. I had him moved from his designated cell
9 to another individual's cell, yes. Not my cell, but
10 another individual.

11 Q. You kept him in there so you could use his
12 commissary money?

13 A. The inmate that was in his cell kept him
14 in there.

15 Q. Well, you helped with that; you got
16 convicted of kidnapping.

17 A. No, the convicted kidnapping is from the
18 night that incident occurred.

19 Q. Okay. I see. So was Mr. Hardy, while he
20 was in this cell for a period of days, free to
21 leave?

22 A. Yes. But the individual followed him
23 everywhere.

24 Q. Was he being tortured while he was in the
25 cell by you and others?

1 A. Not by me. Others, yes. He was getting
2 assaulted.

3 Q. You deny you were torturing him?

4 A. At that time, yes.

5 Q. At some point you were torturing him?

6 A. At that point I held a razor blade to his
7 neck and I threatened him.

8 Q. So that happens in 2004; correct?

9 A. I think in '03.

10 Q. Excuse me. 2003; right?

11 A. Yes, that's correct.

12 Q. And I think you testified that you got to
13 Santa Rosa in -- was it 2005?

14 A. In 2005.

15 Q. And that's when you beat the CO with a
16 soda can in a sock?

17 A. Yes, three COs.

18 Q. Three of them?

19 A. Yes, sir.

20 Q. And that is Defendants' Exhibit AK-3. You
21 were convicted of aggravated battery on a peace
22 officer, a couple of counts; right?

23 A. Yes, sir.

24 Q. And that's related to that case?

25 A. Two aggravated batteries and one battery,

1 yes.

2 Q. So then later you -- I think it was 2011
3 when the assault on Alex Sosoya occurred?

4 A. That's correct.

5 Q. Well, I think I forgot the year. When did
6 you assault Robert Esparza?

7 A. In 2008.

8 Q. 2008. So 2005, Santa Rosa; 2008, Robert
9 Esparza; 2011, Alex Sosoya; correct?

10 A. And 2003, John Hardy.

11 Q. 2014, Javier Molina; is that right?

12 A. Yes, sir.

13 Q. And as we talked about yesterday, right
14 before you cooperated or went and worked for the
15 Government, you were going to attack one of the
16 defendants in this case; correct?

17 A. Not in this case.

18 Q. Well, charged in by the federal
19 government?

20 A. Yes, sir.

21 Q. And that was one of the reasons why you
22 were bringing shanks in your rectum to court;
23 correct?

24 A. Amongst other reasons, yes.

25 Q. And so after all that, you then go to work

1 for the Government October 24, 2017; right?

2 A. Yes.

3 Q. And we talked about what you told the
4 Government yesterday, October 24 -- in your
5 testimony yesterday we talked about what you told
6 the Government on October 24, 2017; right?

7 A. That's correct.

8 Q. And I showed you how you said to Agent
9 Stemo -- or at least Agent Stemo wrote down that you
10 said Mr. Perez was in fear when you took the piece
11 from his walker?

12 A. I don't recall those exact words, but I
13 think you said -- I think you said that I said he
14 was scared.

15 Q. So do you want to take a look at it since
16 you don't recall?

17 A. Yes.

18 MR. VALLE: May I approach?

19 THE COURT: You may.

20 BY MR. VALLE:

21 Q. So Mr. Rodriguez, remember the October 24,
22 2017, report that I showed you yesterday?

23 A. Yes, sir.

24 Q. So I'm going to flip over to page 6 of
25 that report; right?

1 A. That's correct.

2 Q. And you talked about, right here in this
3 first paragraph, "Perez appeared scared and stated
4 that he was down for whatever, 'as long as it was
5 not me'?"

6 A. That's correct.

7 Q. And so you're telling this jury that you
8 never told Agent Stemo that Perez appeared scared?

9 A. I don't remember saying that.

10 Q. So you don't remember it?

11 A. I don't believe I did.

12 Q. I'm sorry, I didn't catch your answer.

13 A. I don't believe I told them that.

14 Q. Okay. And then I asked you yesterday
15 about what that statement meant. And you said,
16 "Well, I don't know. Do you want me to speculate?"

17 Do you remember that?

18 A. Oh, about him being -- not his first
19 rodeo?

20 Q. No, the statement that I just read to you.

21 A. No, you didn't ask me to speculate on
22 that.

23 Q. But you did tell Agent Stemo what you
24 thought that meant, didn't you?

25 A. I told him I don't think --

1 Q. It's yes or no, Mr. Rodriguez. Did you
2 tell Agent Stemo what you thought that meant?

3 A. I don't remember.

4 Q. If I showed you this, would that help you?

5 A. Yes.

6 MR. VALLE: May I approach again?

7 THE COURT: You may.

8 BY MR. VALLE:

9 Q. So Mr. Rodriguez, right after that
10 statement, "I'm down for whatever, as long as it
11 wasn't me," it says, "Rodriguez" --

12 MS. ARMIJO: Objection, Your Honor. The
13 witness wanted to review it to refresh his
14 recollection.

15 MR. VILLA: Your Honor, I'm refreshing his
16 recollection.

17 THE COURT: I think you can put it in
18 front of him and let him look at it.

19 BY MR. VILLA:

20 Q. Mr. Rodriguez, will you read this sentence
21 to yourself, please?

22 A. Okay.

23 Q. Okay. Does that refresh your
24 recollection?

25 A. Yes, it does.

1 Q. And so didn't you say that you understood
2 that statement to mean that Perez did not want to be
3 hurt and would go along with the hit if he did not
4 otherwise have to be involved?

5 A. That makes sense, yes.

6 Q. Now, you said yesterday that you didn't
7 make this statement to Ms. Stemo, and you're saying
8 today you don't remember making that statement;
9 true?

10 A. That's incorrect.

11 Q. So --

12 A. Yesterday you asked me if I made the
13 statement that I aspired to be on the tabla.

14 Q. I'm not asking about that.

15 A. That's the question you asked me
16 yesterday.

17 Q. Okay. Mr. Rodriguez, I'm asking you about
18 my question I asked you yesterday about whether you
19 told Agent Stemo that Mr. Perez appeared scared.
20 And your testimony yesterday was that you didn't say
21 that.

22 A. Right. That's what I said yesterday.

23 Q. And your testimony today is you don't
24 remember?

25 A. I don't remember.

1 Q. Correct?

2 A. I don't think I said that he was scared.

3 That's what I'm saying.

4 Q. All right. This particular report, the
5 one I just showed you --

6 A. Right.

7 Q. -- you had a chance to review this report,
8 didn't you?

9 A. I have not.

10 Q. Never?

11 A. No.

12 Q. That's your testimony?

13 A. That's my testimony. I don't think I
14 reviewed that one.

15 Q. So Mr. Rodriguez, you testified yesterday
16 that you had had a couple of meetings with the
17 Government; right?

18 A. I think I did review that one on October
19 24, very quickly. I think I did.

20 Q. Mr. Rodriguez, my question to you was that
21 yesterday you testified that you had two meetings
22 with the Government; right?

23 A. I said around three, I think.

24 Q. Okay. And you remembered that the
25 third -- well, there was an additional one with Mr.

1 Sanchez where you went to go see him; right?

2 A. That's one that you brought to light
3 yesterday, yes.

4 Q. The second meeting that you had with the
5 Government was on November 1, 2017; right?

6 A. That's when I reviewed that, yes.

7 Q. Okay. So on November 1, 2017, you
8 reviewed the October 24, 2017, statement that I just
9 showed you; right?

10 A. Yes, I did.

11 Q. And when you read it, you clarified some
12 of the details in this report; right?

13 A. I think I did. I don't remember.

14 Q. Well, if Agent Acee said that you
15 clarified the details, would you disagree with him?

16 A. No, I would not.

17 Q. Do you still not remember when you got to
18 clarify the details of that report?

19 A. I think I wrote notes down clarifying what
20 certain things meant, being that I didn't elaborate
21 on certain comments.

22 Q. And so you wrote notes down on that
23 report, the October 24 report; right?

24 A. Not on that report. While I was being
25 housed in another facility prior to me going and

1 pleading guilty, I wrote notes down as to --
2 sometimes I forget I'm talking to civilians and not
3 prisoners. So when I speak, I automatically think
4 they understand what I'm saying.

5 Q. Okay. So you wrote some notes?

6 A. Yes, to clarify things.

7 Q. But you don't disagree that you got to do
8 that after reading Agent Stemo's October 24, 2017,
9 report?

10 A. Say that again.

11 Q. You do not disagree with me that you got
12 to write your notes down after reading Agent Stemo's
13 October 24, 2017, report?

14 A. Yes, I disagree with that.

15 Q. You disagree with that?

16 A. Yeah.

17 Q. So let me ask: When did you write your
18 notes down?

19 A. I wrote notes down when I left October 24,
20 and in between the time I took the plea of guilty on
21 November 1st, I think.

22 Q. And on November 1st --

23 A. It wasn't notes.

24 Q. Mr. Rodriguez, answer my question. So
25 don't give an answer until I ask another question.

1 Okay?

2 A. Okay.

3 Q. So on November 1st is when you got to
4 review Agent Stemo's report?

5 A. That's correct.

6 Q. And that was before you got to meet with
7 Agent Acee on November 1st?

8 A. That's correct.

9 Q. And you had an opportunity to clarify the
10 details in Agent Stemo's report with Agent Acee?

11 A. That's correct.

12 Q. And Agent Acee then writes a report of the
13 November 1st, 2017, meeting with you that's
14 approximately 11 pages long; correct?

15 A. Right.

16 Q. And nowhere in that report does he say
17 that you clarified that you didn't tell Agent Stemo
18 Mr. Perez was in fear?

19 A. I did not -- I think it's in the notes I
20 wrote.

21 Q. Well, let me get you to answer my
22 question. Okay, sir? I'm talking about the
23 November 1st, 2017, report that Agent Acee wrote.
24 The report that Agent Acee wrote of your November
25 1st meeting.

1 A. Right.

2 Q. Okay. You've read that report; right?

3 A. I have.

4 Q. And that report is 11 pages long?

5 A. I don't know.

6 Q. If I showed it to you, would you know?

7 A. Yes.

8 MR. VILLA: May I approach?

9 THE COURT: You may.

10 BY MR. VILLA:

11 Q. Mr. Rodriguez, I'm showing you the report
12 by Agent Acee; right?

13 A. Correct.

14 Q. And it says about a meeting on November
15 1st, 2017, with you; right?

16 A. That's correct.

17 Q. And the report is actually dated November
18 20; right?

19 A. It is, yes.

20 Q. That's when Mr. Acee finished the report?

21 A. All right.

22 Q. And it says it's 11 pages long?

23 A. Okay.

24 Q. Doesn't it?

25 A. Yes.

1 Q. You've read this before?

2 A. Yes, I read the draft of that, yes.

3 Q. And you've read the final version, haven't
4 you?

5 A. I have not.

6 Q. It's on your tablet, isn't it?

7 A. No, it's not.

8 Q. It's not. But you read the draft?

9 A. I read the draft, yes.

10 Q. And you agree with me that in the draft it
11 doesn't say, "I never said that to Agent Stemo on
12 October 24 about in Perez being in fear"?

13 A. No, I did not clarify that in that draft.

14 Q. You never did?

15 A. No.

16 Q. And you remember me asking you yesterday
17 about solitary confinement?

18 A. I do.

19 Q. Would you agree with me that in solitary
20 confinement people get paranoid?

21 A. Yeah. That's one of the symptoms of
22 solitary confinement.

23 Q. And people can develop significant
24 psychological and social problems?

25 MS. ARMIJO: Objection, foundation.

1 THE COURT: Why don't you lay a
2 foundation?

3 BY MR. VILLA:

4 Q. Well, Mr. Rodriguez, you know from your
5 time in solitary confinement that you can develop
6 significant psychological and social problems?

7 A. I've studied it, yes.

8 Q. And you've experienced it yourself,
9 correct? Solitary confinement?

10 A. I've experienced solitary confinement,
11 yes.

12 Q. So you agree while you're in solitary
13 confinement, there's other inmates next to you,
14 sometimes on either side or above you; right?

15 A. That's correct.

16 Q. And they're in solitary confinement, too?

17 A. That's correct.

18 Q. So from your experience, you know that
19 inmates can develop significant psychological and
20 social problems?

21 A. From what I've studied, yes.

22 MS. ARMIJO: Objection, foundation.

23 THE COURT: Sustained.

24 BY MR. VILLA:

25 Q. Now, after the trial started -- the trial

1 started on January 29. Opening statements were
2 given on Wednesday, January 31. You had another
3 meeting with the Government on February 3, 2017,
4 didn't you?

5 A. What's the date today?

6 Q. Today, I believe, is the 8th.

7 A. That was on Saturday.

8 Q. I'm losing track of time. I believe
9 Saturday was February 3.

10 A. That's the day, yes.

11 Q. That's when you met with the Government?

12 A. Last Saturday?

13 Q. I think that's what you testified
14 yesterday.

15 A. Yes. I don't keep track of the dates very
16 well, but yes.

17 Q. This past Saturday?

18 A. Yes.

19 Q. You met with Ms. Armijo?

20 A. Yes.

21 Q. Is that correct?

22 A. That's correct.

23 Q. And Agent Stemo was there again; right?

24 A. I do not remember that. If she was, she
25 wasn't in the room I was in.

1 Q. Have you met with the Government anytime
2 since that past Saturday?

3 A. Since last Saturday?

4 Q. Yes, sir.

5 A. No, sir.

6 Q. And a report was made following your
7 meeting with the Government?

8 A. I don't know.

9 Q. You'd agree with me that at that meeting
10 on February 3, you didn't say, "Hey, Agent Stemo,
11 you got it wrong on October 24 about Mr. Perez being
12 in fear" when you took the piece from his walker?

13 A. No, but they asked me if I had stated he
14 was scared, and I said I didn't remember that.

15 Q. So Ms. Armijo asked you that?

16 A. Yes.

17 Q. That was after the opening statements in
18 this case?

19 A. They asked me if I recalled him being
20 scared at the time. I told him "I don't remember."

21 Q. My question to you, Mr. Rodriguez --

22 A. Yes.

23 Q. -- is you know that that question was
24 asked of you after opening statements were made in
25 this case?

1 A. I believe so.

2 Q. Now, all of sudden, you've changed what
3 you told Agent Stemo?

4 A. How did I change it?

5 Q. Agent Stemo wrote that you said Mr. Perez
6 was in fear. Now you're telling the jury that
7 didn't happen?

8 A. Yeah, but not based on Saturday.

9 Q. Well, you certainly gave your testimony
10 yesterday after Saturday; right?

11 A. Right.

12 Q. After you met with the Government?

13 A. That's correct.

14 Q. You agree with that?

15 A. That's correct.

16 MR. VILLA: May I have a moment?

17 THE COURT: You may.

18 MR. VILLA: No further questions, Your
19 Honor.

20 THE COURT: Thank you, Mr. Villa.

21 Mr. Jewkes, Ms. Jacks, do you want to go
22 next?

23 MS. JACKS: Your Honor, I think we're
24 last.

25 THE COURT: Okay. Ms. Bhalla.

1 CROSS-EXAMINATION

2 BY MS. BHALLA:

3 Q. Good morning, Mr. Rodriguez.

4 A. Good morning.

5 Q. Mr. Rodriguez, you testified yesterday
6 that you weren't going to hit Javier Molina until
7 the paperwork came down; is that correct?

8 A. That's correct.

9 Q. Okay. And in fact, you testified that you
10 told David Calbert that you wouldn't hit him until
11 he brought paperwork down; is that right?

12 A. That's incorrect.

13 Q. Did you testify that you needed David
14 Calbert to bring the paperwork?

15 A. That I notified Mauricio Varela and Lupe
16 Urquizo that I was to let Calbert know, when he
17 shows up, that I'm not going to hit him without the
18 paperwork.

19 Q. Okay. And the gist of that, Mr.
20 Rodriguez, is that you told everybody you weren't
21 going to hit him without the paperwork; is that fair
22 to say?

23 A. That's fair to say.

24 Q. But you did try to hit him before you say
25 the paperwork came down, didn't you?

1 A. I don't recall that.

2 Q. You don't recall. Do you recall your
3 interview with Special Agent Acee on October 24 of
4 2017?

5 A. Yes, sir -- yes, ma'am.

6 Q. Okay. And in that interview you told
7 Agent Acee --

8 MS. ARMIJO: Your Honor, I'm going to
9 object that she's misstating the interviews.

10 THE COURT: Well, I'll let you work with
11 that on redirect. Overruled.

12 Ms. Bhalla.

13 MS. BHALLA: Thank you, Your Honor.

14 BY MS. BHALLA:

15 Q. Let me rephrase that. I think that might
16 be fair. You met with Agent Stemo on October 24 of
17 2017; is that correct?

18 A. That's correct.

19 Q. Okay. And you told Agent Stemo that
20 before any paperwork came down, you ordered or tried
21 to convince Efrain Martinez to murder Javier Molina?
22 Didn't you tell her that?

23 A. And Timothy Martinez, yes.

24 Q. Okay. You tried to convince both of
25 them --

1 A. Right.

2 Q. -- to murder Javier Molina?

3 A. Right.

4 Q. And you did that, you said, because you
5 were high on meth. Is that fair to say?

6 A. I don't recall that at that time, but I
7 was probably high on meth at that time, yes.

8 Q. So you don't disagree that that's what you
9 said to Ms. Stemo?

10 A. No.

11 Q. Okay. You provided testimony in this case
12 that you had the discovery since when? 2015; is
13 that right?

14 A. Since the rest of the defendants.

15 Q. Okay. When was that?

16 A. I don't recall what the date.

17 Q. I'm not asking for a specific date.

18 A. I've had it for the past two years.

19 Q. So you've had discovery in this case for
20 two years?

21 A. When you guys issued the discovery, I
22 received it with the same defendants.

23 Q. So you've read some of that discovery,
24 haven't you?

25 A. I pretty much read all of it.

1 Q. You read all of it. And in fact, when you
2 had some of these meetings with the Government or
3 with the agents in this case, you took the
4 opportunity to correct some of the discovery, didn't
5 you, or what you thought were mistakes in the
6 discovery?

7 A. I probably brought up some mistakes, yes.

8 Q. Okay. And in October, the October 24
9 meeting with Ms. Stemo, you told her that you had
10 reviewed some of the statements that Mr. Armenta
11 made; is that correct?

12 A. That's correct.

13 Q. And you told her that Armenta's statement
14 that you were asking for paperwork wasn't true?

15 A. It was not true.

16 Q. Okay. You were asking for a syringe;
17 right?

18 A. I was asking for a syringe at the door,
19 yes.

20 Q. So you knew the discovery well enough that
21 you could point out what was wrong in the discovery
22 to the agents; is that fair to say?

23 A. Due to my involvement in the case, yes.

24 Q. Okay. Part of the discovery in this case
25 contains statements by Carlos Herrera; is that fair

1 to say?

2 A. In the case?

3 Q. Yes.

4 A. Statements that he made?

5 Q. Yes.

6 A. Not that I'm aware of.

7 Q. You're not aware of any statements that my
8 client made in the discovery?

9 A. To the FBI?

10 Q. No, to other people, to other people in
11 this case.

12 A. To other defendants?

13 Q. Yeah.

14 A. You would have to explain to me what
15 you're talking about.

16 Q. I'd have to explain to you what I'm
17 talking about? Do you recall your debrief in
18 November of 2017?

19 A. On October 24?

20 Q. Yes.

21 A. Emotional time. But yes, I recall most of
22 it. Yes, I was in a little bit of distress.

23 Q. Okay. And you talked to -- I believe it
24 was Special Agent Acee about some of the discovery
25 that you read in this case; is that right?

1 A. On October 24?

2 Q. No, on November 1st.

3 A. That's correct.

4 Q. And you told Agent Acee that you were
5 frustrated or angry with Carlos Herrera because he
6 said things about you that weren't very nice?

7 A. Oh, on the wiretaps?

8 Q. Yeah.

9 A. That's correct.

10 Q. Okay. And you also mentioned it when you
11 met with Ronald Sanchez, didn't you?

12 A. That's correct.

13 Q. And I believe -- and correct me if I'm
14 wrong -- that you told Ronald Sanchez that he said,
15 'Blue ain't worth a fuck. He's a bitch, this and
16 that.'" Did you tell that to Ronald Sanchez?

17 A. Yeah, I probably did. If it's on the
18 wiretap, that's what he said about me.

19 Q. Okay. You didn't like that, did you?

20 A. Well, he was my carnal. He was someone I
21 respected. And I didn't expect that from someone
22 behind my back.

23 Q. So is it fair to say you were pretty mad
24 when you read that?

25 A. I was shocked when I listened to it, yes.

1 Q. Okay. And the gist of some of those
2 statements --

3 MS. ARMIJO: Objection, hearsay.

4 MS. BHALLA: Your Honor, it's not being
5 offered for the truth of the matter asserted. It's
6 being offered to prove bias.

7 THE COURT: Let's see what the question is
8 first. Then I can determine what the answer may be.

9 MS. BHALLA: Thank you, Your Honor.

10 BY MS. BHALLA:

11 Q. The gist of those statements were that you
12 were in blue pod, high on meth; right?

13 A. No.

14 Q. No?

15 A. Not that I recall, that everyone was high
16 on meth. He was upset that he didn't get no
17 methamphetamine.

18 Q. You were in the blue pod; right?

19 A. Yes.

20 Q. And he told Mr. Archuleta that you --

21 MS. ARMIJO: Objection, hearsay.

22 THE COURT: Well, if you're soliciting
23 your own client's statements, sustained.

24 BY MS. BHALLA:

25 Q. That you were over there --

1 MS. ARMIJO: Objection, hearsay.

2 Q. -- high on meth?

3 THE COURT: You can't elicit your own --

4 MS. BHALLA: I'm sorry, Your Honor. I
5 thought you --

6 MS. ARMIJO: Your Honor, I move to strike
7 that.

8 MS. BHALLA: That's fine. I have no
9 objection.

10 THE COURT: Well, it's just a question.
11 I'll sustain the objection.

12 BY MS. BHALLA:

13 Q. The discovery that you read wasn't very
14 flattering to you, was it?

15 A. Transcripts?

16 Q. Yeah.

17 A. I didn't read no transcripts of Carlos
18 Herrera. It was audio.

19 Q. Okay. So you listened to the audio?

20 A. I listened to the audio.

21 Q. And it wasn't very flattering, was it?

22 A. I guess not, huh?

23 Q. I guess not.

24 MS. ARMIJO: Was that a question or a
25 comment by counsel? I'd ask --

1 THE COURT: I think it's a sufficient
2 question. I'll allow it. Overruled.

3 BY MS. BHALLA:

4 Q. You testified that you came to court with
5 shanks; is that correct?

6 A. I went everywhere with shanks, yes.

7 Q. You went everywhere with shanks. And you
8 informed Agent Acee that you felt that Carlos
9 Herrera in those statements was acting like he was
10 somebody that he wasn't; isn't that true?

11 A. That's correct.

12 Q. And in fact, you said, "That's not really
13 who he was. Talking to Styx like somebody. That's
14 not him. He's never done anything."

15 A. He hasn't.

16 Q. Okay. And because of that and because of
17 those statements, you planned to murder Carlos
18 Herrera on the transport van, didn't you?

19 A. Along with other defendants, yes.

20 Q. I'm not asking what other defendants did.
21 I'm asking what you did.

22 A. I was a part of the plot, yes.

23 Q. You were part of the plot. And what did
24 that plot entail you doing, Mr. Rodriguez?

25 A. I --

1 MS. ARMIJO: Your Honor, may we approach?

2 THE COURT: You may.

3 (The following proceedings were held at
4 the bench.)

5 MS. ARMIJO: I just want to make this
6 clear that she's now opened the door to that plot,
7 and that plot involved officially Mr. Daniel
8 Sanchez, so she's opening this door. We feel it's
9 already opened, and now Mr. Sanchez -- he would
10 testify that -- I believe he was the one that came
11 up with this plot; that it was all the co-defendants
12 in this case. Specifically most of them involve,
13 most importantly, Mr. Sanchez, Dan Sanchez.

14 MR. CASTELLANO: I think it's a little
15 late. The door has been opened and we're going to
16 drive right through it. That's coming in.

17 MS. BHALLA: Your Honor, there is the
18 statements that Mr. Rodriguez made that he was
19 hatching a plot to murder my client based on the
20 testimony that he read or based on the statements
21 that he read. It goes to bias. His testimony was
22 that he has had a change of heart, he's cooperating
23 with the Government. It's not true. And the whole
24 security issues that we've been dealing with in this
25 court are because of Mr. Rodriguez and his plan to

1 murder my client on the transport van. I don't see
2 how that opens the door to trying to prove someone
3 else was involved in the plot when their witness has
4 admitted that he was responsible for that.

5 THE COURT: Do you have anything to say on
6 this? I think I can actually sort of cabin this
7 thing.

8 MS. JACKS: Certainly this has nothing to
9 do with bringing this topic up. It's something that
10 is inappropriate.

11 THE COURT: Why don't you do this? I
12 think for the present time just lead him through
13 this. Let's not see if we need to get Mr. Sanchez
14 involved.

15 MS. BHALLA: I have no intention of doing
16 that.

17 MR. CASTELLANO: At this point they're
18 going to use this as a sword and a shield. They're
19 going to say, "We only want to know what you did,
20 Mr. Rodriguez." There are other people involved in
21 that plot.

22 THE COURT: I may allow that. I think I
23 can allow Ms. Bhalla to impeach him, but try to ask
24 leading questions and don't let him get Mr. Sanchez
25 involved. We'll take it one at a time.

1 MS. JACKS: Your Honor, I would object.

2 THE COURT: I note the Government's
3 position, but I'm not sure that it needs to be
4 opened up there. If you want to open it up that
5 he's trying to kill your client, I don't think
6 that's the case. But I think --

7 MS. JACKS: I think what the Government is
8 saying is that Mr. Sanchez was involved.

9 THE COURT: They are, but --

10 MS. JACKS: My concern is this line of
11 questions is just inviting an outburst involving Mr.
12 Sanchez in some uncharged crime that we have
13 actually no additional information on, other than
14 just what this witness said.

15 MS. BHALLA: The problem is, Your Honor,
16 that Mr. Herrera --

17 THE COURT: Hold on. Officer, could you
18 bring Mr. Rodriguez right over here?

19 You need to talk right here.
20 Mr. Rodriguez, she's going to ask you about this
21 plot. She's going to ask you some leading
22 questions.

23 THE WITNESS: Okay.

24 THE COURT: So just answer the questions,
25 answer them truthfully.

1 THE WITNESS: Truthfully.

2 THE COURT: If you can't answer them
3 truthfully without giving more information, say "I
4 can't answer it."

5 THE WITNESS: Okay.

6 THE COURT: If you can answer yes or no,
7 she's going to lead you through it.

8 THE WITNESS: Just --

9 THE COURT: I'm not interested, unless the
10 question calls for an answer, you talking about
11 Mr. Daniel Sanchez.

12 THE WITNESS: Okay.

13 THE COURT: So she's going to try to ask
14 you questions that don't require you to mention him
15 as being part of this plot, if he was a member of
16 the plot. I don't know if he was or not.

17 THE WITNESS: Okay. So exclude him from
18 it, if he was?

19 THE COURT: You've got tell the truth.

20 THE WITNESS: Okay.

21 THE COURT: So if you can't answer the
22 question truthfully without mentioning Mr. Sanchez,
23 then just say --

24 THE WITNESS: Don't answer? So they ask
25 me a question, the answer --

1 THE COURT: We're just trying to keep you
2 from just dropping his name, is what -- if you can
3 avoid dropping his name just completely --

4 THE WITNESS: And if I can't answer, just
5 say no?

6 THE COURT: If you can't be truthful, say,
7 "I can't answer truthfully" because --

8 THE WITNESS: Because I can't incorporate
9 him?

10 THE COURT: Yeah.

11 THE WITNESS: Okay.

12 THE COURT: You don't want to mention his
13 name. She's going to try to lead you. If you can't
14 answer that truthfully, given the Court's
15 instruction --

16 THE WITNESS: I don't think I understand
17 when -- if he's a part of the plot, and the plot
18 is -- involves him and I can't answer it, do that.

19 THE COURT: If you can't answer it
20 truthfully, you tell her, "Given what the Court
21 said, I can't answer that question truthfully."

22 THE WITNESS: And say, "The truth is that
23 Daniel Sanchez is involved, so I cannot incorporate
24 it"?

25 THE COURT: Don't drop that in unless she

1 calls for it. And I don't think she's going to call
2 for it.

3 THE WITNESS: Okay.

4 THE COURT: She may ask for other people.
5 She may ask for Carlos Herrera. She may ask those
6 questions. I don't think she's going to ask that
7 question. But if it requires you to say Mr.
8 Sanchez, if she does, say, "I can't answer the
9 question."

10 THE WITNESS: Okay. I understand.

11 MS. ARMIJO: Can we make sure that he says
12 "I can't answer that question based on the Court's
13 ruling"?

14 THE COURT: That's fine. You can say,
15 "based upon what the Court's ruling."

16 THE WITNESS: Okay.

17 MS. BHALLA: Your Honor, just for the
18 record, I'm going to do my best to be careful for my
19 questions. But just for the record, my client does
20 have a right to put on a defense.

21 THE COURT: He does.

22 MS. JACKS: Perhaps the remedy is to sever
23 Mr. Sanchez.

24 THE COURT: We won't do that. If
25 necessary, he may have to say Mr. Sanchez is part of

1 the plot. It's not the end of the world. That's
2 his testimony.

3 MS. JACKS: That may be your view, but
4 it's certainly not Mr. Sanchez'.

5 THE COURT: But if it's the evidence, it's
6 the evidence.

7 MR. CASTELLANO: Your Honor, here's the
8 problem, is that the questions are misleading and
9 the answers will be misleading, because Mr. Herrera
10 said a number of disrespectful things about other
11 members of the SNM in this thing. So it wasn't just
12 tailored towards Mr. Rodriguez.

13 As a result of disrespect shown toward
14 multiple members, multiple members conspired to
15 murder him on the transport van. But the problem
16 with this at this point, now that she's opened the
17 door, is the jury is not going to get the full
18 picture of -- it's not just focused --

19 THE COURT: Juries often don't get the
20 full picture. Let's see if we can avoid it being
21 false, misleading. Be careful.

22 MR. CASTELLANO: We're asking now --

23 MS. BHALLA: And Your Honor, the issue
24 here is Mr. Rodriguez' state of mind and bias.

25 THE COURT: I think that's the reason I'm

1 trying to limit it here. That's why we're going to
2 get this testimony in, and I think it's --

3 MR. BECK: Your Honor, the testimony is
4 that he's a good soldier. He was close with Mr.
5 Sanchez. Mr. Sanchez and him came up with this
6 plot. Mr. Sanchez directed him to go and do this as
7 a soldier. I mean we've heard from even defense
8 counsel that he was the torpedo, so saying that --
9 painting a picture for this jury that he was going
10 to hit Mr. Herrera without explaining that he was
11 doing it for the S at Daniel Sanchez's direction
12 paints a false impression with the jury as to what
13 the evidence is.

14 THE COURT: Well, it's Ms. Bhalla --

15 MS. JACKS: I join in Mr. Beck's comments.
16 We're begging for a mistrial and extreme prejudice
17 by allowing this line of questioning.

18 THE COURT: It's Ms. Bhalla's questions.
19 You've got your marching orders. Let's see if you
20 can carry it out.

21 MR. VILLA: On behalf of Mr. Perez, we
22 would object to the extent Mr. Rodriguez is not
23 permitted to answer questions about this, because I
24 think it does go to his bias, and that would affect
25 Mr. Perez.

1 I'd also like to know from the Government
2 whether they believe Mr. Rodriguez would include Mr.
3 Perez in this conspiracy, so that I know what record
4 I need to make right now.

5 THE COURT: All right. We'll take that up
6 at a break.

7 (The following proceedings were held in
8 open court.)

9 THE COURT: All right, Ms. Bhalla.

10 BY MS. BHALLA:

11 Q. Mr. Rodriguez, I'm going to ask you about
12 some statements that you made to Mr. Acee. Okay?

13 A. Yes, ma'am.

14 Q. About what you told him was going to
15 happen on the transport van.

16 A. Yes, ma'am.

17 MS. ARMIJO: Your Honor, and could she ask
18 the question as opposed to just reading the
19 statement?

20 MS. BHALLA: Your Honor, I'm trying to
21 keep it narrow.

22 THE COURT: All right. I'll give Ms.
23 Bhalla a little leeway. Overruled.

24 BY MS. BHALLA:

25 Q. You stated to Agent Acee that the plan was

1 to use a sock to strangle Carlos Herrera; correct?

2 A. In the transport van, that's correct.

3 Q. And you told Agent Acee that when the van
4 doors would be opened, there would be a dead guy; is
5 that fair?

6 A. That's fair.

7 Q. Okay. And you were referring to my
8 client, Carlos Herrera?

9 A. Yes, I was.

10 Q. And you told Agent Acee that in November;
11 correct?

12 A. Yes. On the day of my plea.

13 Q. Yeah, after you had had the change of
14 heart to become a better person; right?

15 A. Right.

16 Q. That's right.

17 MS. BHALLA: Your Honor, may I have a
18 moment?

19 THE COURT: You may.

20 MS. BHALLA: I don't have any other
21 further questions, Your Honor.

22 THE COURT: Thank you, Ms. Bhalla.

23 Mr. Lowry, do you have cross-examination
24 of Mr. Rodriguez?

25

1 CROSS-EXAMINATION

2 BY MR. LOWRY:

3 Q. Good morning, Mr. Rodriguez.

4 A. Good morning, sir.

5 Q. We've been talking a lot about a tablet
6 today, and do you recognize this?

7 A. Yes, I do.

8 Q. And what is this?

9 A. That's the discovery of everything to do
10 with the RICO VICAR case against SNM.

11 Q. And all of the discovery in the case was
12 downloaded on this portable computer; correct?

13 A. I don't know if all of it was, but the
14 majority.

15 Q. Okay. Do you have any reason to believe
16 that some of the discovery was left out?

17 A. Of mine, yes.

18 Q. Why is that?

19 A. Because I wasn't there for the updated --
20 the last update. My 302s ain't in there. There is
21 a little bit of stuff that ain't in there.

22 Q. But through the time until October 24 --

23 A. Right.

24 Q. -- of 2017, you'd had all the discovery on
25 this tablet?

1 A. All the discovery available at that time,
2 yes.

3 Q. And you were living in the Department of
4 Corrections?

5 A. No.

6 Q. So you didn't have time to review it?

7 A. No, I wasn't living in the Department of
8 Corrections.

9 Q. Well, you were incarcerated?

10 A. Yes.

11 Q. And all day long you had access to this to
12 review the discovery?

13 A. All day long. They would take it from us
14 I think at nighttime to charge, and then we would
15 have it. At first there was a lot of restrictions
16 on it, but towards the end, they would allow us to
17 have it and charge it for, like, three or four
18 hours.

19 Q. So my point is: You had ample opportunity
20 to review everything that was on this tablet.

21 A. I did.

22 Q. And there are tens of thousands of pages
23 of documents on this tablet.

24 A. I believe so, yes.

25 Q. And there was over 10,000 hours of

1 recorded conversations on this tablet?

2 A. That's correct.

3 Q. And there were videos on this tablet?

4 A. There was videos.

5 Q. Probably I don't know how many, but a
6 significant number of videos?

7 A. A large amount, yes.

8 Q. And you reviewed all of that?

9 A. That's correct.

10 Q. Okay. And you had an opportunity to even
11 review the video of the assault you talked about
12 with Robert Esparza in 2008?

13 A. That's correct.

14 Q. And you're familiar with that video?

15 A. Well, yeah, I'm in the video.

16 Q. And the video is a true and accurate
17 depiction of what happened during the assault?

18 A. It is.

19 MR. LOWRY: Your Honor, we've marked for
20 identification purposes two exhibits, Defendants'
21 AK-4 and Defendants' AK-5. We'd move them into
22 admission.

23 THE COURT: Any objection, Ms. Armijo?

24 MS. ARMIJO: Yes, Your Honor. May we
25 approach?

1 THE COURT: You may.

2 (The following proceedings were held at
3 the bench.)

4 THE COURT: What are these exhibits?

5 MR. LOWRY: These are videos of the
6 assault on Mr. Esparza. And they just go to show --
7 again, this comes back to bias, motivation to
8 testify favorably for the Government. These are the
9 charges that he pled guilty to, and quite frankly
10 they're disturbing, violent.

11 THE COURT: What is it?

12 MS. ARMIJO: Your Honor, this is the
13 incident that he has admitted to now several times
14 back in -- before he was an SNM Gang member. And
15 he's already admitted to it. There is no proper
16 purpose. It's not an SNM-related hit and it's just
17 404(b). That's highly inflammatory. If this were a
18 sanctioned SNM hit, I think it would be different.
19 But this is -- this is why he is an SNM member. But
20 I think it still comes up to --

21 THE COURT: How does it hurt you, though,
22 if you're trying to establish racketeering activity?
23 Wouldn't this help establish your case?

24 MR. BECK: It may be. But it doesn't
25 change the fact that it's still 404(b). The only

1 purpose --

2 THE COURT: Well, a lot of evidence has a
3 propensity. But you're offering it. Give me a
4 non-404(b) --

5 MR. LOWRY: It goes to bias and
6 motivation. He's under indictment.

7 THE COURT: Why does it show -- tell me
8 how, if it's in front of the jury, you can argue
9 that it goes to bias and prejudice.

10 MR. LOWRY: This is one of his pending
11 charges.

12 MS. ARMIJO: No, it's not one of his
13 pending charges. It's --

14 MR. LOWRY: Pardon me. They've been using
15 it to demonstrate racketeering.

16 THE COURT: Why do you want it?

17 MR. LOWRY: I don't. He's actually been
18 equivocal about it. He said that it wasn't -- he
19 wasn't an SNM member during the time of this
20 assault.

21 THE COURT: It's hard for me -- this isn't
22 relevant. I'm a little confused why one side is
23 wanting to put it in and not the other. If they
24 want to put it in, it seems like it helps the
25 Government.

1 MR. BECK: I agree. I'm saying it's not
2 admissible because it's 404(b).

3 THE COURT: If they want to establish
4 racketeering activity, that's relevant. It's got a
5 non-404(b) purpose.

6 MR. LOWRY: Your Honor, it goes to
7 impeachment, as well.

8 THE COURT: How so?

9 MR. LOWRY: Because he didn't describe it
10 accurately. He said this happened out on the yard,
11 and he made it sound like it was a fair fight.

12 THE COURT: Well, I'll let you play it.

13 (The following proceedings were held in
14 open court.)

15 THE COURT: All right. Do any of the
16 defendants have any other objections?

17 MR. VILLA: No.

18 THE COURT: All right. Defendant's
19 Exhibits AK-4 and AK-5 will be admitted into
20 evidence.

21 (Defendants' Exhibit AK-4 and AK-5
22 admitted.)

23 THE COURT: All right, Mr. Lowry.

24 BY MR. LOWRY:

25 Q. While she's pulling that up, this was

1 something that was part of your life for those two
2 years, between the time you were charged and October
3 24?

4 A. It was a significant part. I was in the
5 process of defending my life against the Government.

6 Q. And you still have access to this?

7 A. I still have access to it. I don't use it
8 as often as I used to, but I still have access to
9 it.

10 Q. Okay. Now, do you recognize this pod?

11 A. That's PNM Level 6, North facility, U pod.

12 Q. Can we stop this for a second so I can put
13 a time signature on it?

14 And on AK-4, we're looking at channel 12,
15 and the date is March 4, 2008?

16 A. That's correct.

17 Q. And the time stamp is 8:47:26:125?

18 A. Yes, sir.

19 Q. Now, on your direct testimony I think that
20 you said this happened out in the yard?

21 A. 2011 happened in the yard.

22 Q. Right.

23 A. And this happened in the pod.

24 Q. In the interior of the pod. And this
25 happened -- actually, it started in the shower

1 stall; correct?

2 A. Yes. I was in the shower.

3 Q. And in fairness, what we'll see is, you
4 hid in the shower?

5 A. Yes, I did.

6 Q. And I want to explain to the jury the
7 process, when you're in Level 6, to get to the
8 shower, you actually -- you start in your cell?

9 A. That's correct.

10 Q. And to exit the cell, you have to -- there
11 is a little port, like, where they hand in the food
12 trays?

13 A. Do you want me to explain it? I'll
14 explain it.

15 Q. Well, just work with me here. And you
16 have to back up to that port and hold your wrists
17 out the port so you can get handcuffed.

18 A. Yes.

19 Q. And then once you're handcuffed, you pull
20 your hands back in that port, and then they open the
21 door to your cell?

22 A. No, they hold onto a restraint rope and
23 keep your hands towards the food port.

24 Q. Okay.

25 A. They keep you pretty much up against the

1 food port so you cannot pull away or nothing.

2 Q. While they open the door?

3 A. That's correct.

4 Q. And that's because they want to control
5 your physical ability?

6 A. That's correct.

7 Q. And the same thing happens when you get to
8 the shower stall; is that correct?

9 A. Yes. There's a food port in the shower
10 and they take them off and put them on in the food
11 port.

12 Q. So the whole time you're in the open area
13 of the pod, you're handcuffed behind your back?

14 A. Yes.

15 Q. And you're being escorted by a
16 correctional officer?

17 A. Yes, sir.

18 (Tape played.)

19 A. I think if you speed it up to an hour and
20 52 minutes, I think it's right there at the
21 beginning of it.

22 Q. Right.

23 A. There you go.

24 Q. This is you being escorted into the shower
25 stall; correct?

1 A. Yes, that's me.

2 Q. Can we pause that for a second?

3 And that's at time signature 8:48:45:140?

4 A. That's correct.

5 Q. And he's opening the shower and letting
6 you in?

7 A. Yes.

8 (Tape played.)

9 Q. And what we're seeing now is you're
10 holding your hands out of that port and he's
11 uncuffing you so you can take an ordinary shower?

12 A. Yes, sir.

13 Q. That's pretty austere conditions in that
14 shower stall.

15 A. "Austere" is meaning what?

16 Q. There's not much in there, just the metal
17 walls.

18 A. It's not an ordinary shower.

19 Q. Is there a shower curtain in there?

20 A. No. It's far from ordinary. It's just a
21 silver shower with a nozzle and I think a hook.

22 Q. Now, you were in there for a considerable
23 period of time, about 40, 45 minutes?

24 A. I do not recall.

25 Q. But if we look at this, this is at

1 8:49:29, and if we move this up 40 minutes...

2 (Tape played.)

3 Q. So during this period of time, you would
4 agree with me that they asked a different inmate if
5 he wanted to go to the shower and he thought, No,
6 no, somebody is in there?

7 A. At this time?

8 Q. Yes.

9 A. I don't know if it's at this time. You'll
10 see the officer come in, and he proceeds to ask him,
11 and a few inmates refused.

12 Q. Including initially Mr. Esparza?

13 A. No, he told the officers that somebody was
14 in the shower.

15 Q. Right.

16 A. And the officer looked in the shower.

17 Q. How did the officer not see you?

18 A. I pressed myself up against the shower
19 wall where the nozzle is. And he looked in and he
20 didn't see me.

21 Q. Right. So you hid from the officer?

22 A. Yes, sir.

23 Q. Because you wanted to ambush Mr. Esparza?

24 A. Yes.

25 Q. Because Mr. Esparza owed you the \$900 for

1 the drug?

2 A. I was an SNM member and I didn't want to
3 allow somebody outside the SNM to burn the SNM, make
4 me look weak.

5 Q. But when you first met with the FBI, you
6 said you were not an SNM member.

7 A. Denied it.

8 Q. Okay. Pardon me?

9 A. I denied it.

10 Q. And this is after you decided to cooperate
11 with the United States?

12 A. That's correct.

13 Q. And when you sat down with them, you told
14 them you were going to be truthful?

15 A. I did.

16 Q. And you told the prosecutors and the FBI
17 agents who were interviewing you that other people
18 took responsibility for this crime?

19 A. Yes.

20 Q. And that was Arturo Garcia and Juanito
21 Mendez?

22 A. Yes, sir.

23 Q. Now, these are the guards coming in to
24 check to see if the shower is clear, and he checks
25 on Mr. Esparza's request, and that's where you hid

1 from him?

2 A. Yes.

3 Q. And would you agree with me that the one
4 deputy exits the pod and the other deputy goes to
5 get Mr. Esparza to bring him to the shower?

6 A. Yes, I would.

7 Q. And you were lying in wait in the shower.

8 A. I was.

9 Q. And you were armed with a shank.

10 A. Armed with a shank.

11 Q. And you knew that you wanted to harm Mr.
12 Esparza?

13 A. Yes, sir.

14 Q. That was your full intention?

15 A. You don't do it otherwise.

16 Q. And that's because you didn't want to look
17 weak?

18 A. That's the mentality of the SNM.

19 Q. Well, that was your mentality.

20 A. That's the mentality that was ingrained in
21 me through the SNM.

22 Q. Well, pause that for a second. So that's
23 you stabbing Mr. Esparza repeatedly?

24 A. Correct.

25 Q. As soon as they opened the stall, you

1 jumped him.

2 A. I grabbed him in a head lock and began
3 stabbing him in the stomach area.

4 Q. And Mr. Esparza was still handcuffed
5 behind his back?

6 A. That's correct.

7 Q. So he can do very little to protect
8 himself.

9 A. That's the purpose behind it.

10 Q. And the officers who were there both ran
11 out.

12 A. Yes, they did.

13 Q. And left you free to assault Mr. Esparza?

14 A. Yes, sir.

15 Q. Which you took full advantage of?

16 A. As the video will show.

17 Q. Go ahead and play it.

18 (Tape played.)

19 Q. So this is you still stabbing him
20 repeatedly; correct?

21 A. That's correct. I think the handle broke
22 at this time. That's why I was trying to pull the
23 icepick out of the handle to begin stabbing him,
24 which is the plain icepick.

25 Q. In fairness to Mr. Esparza, he put up a

1 pretty good fight for being handcuffed behind his
2 back.

3 A. Yes, he did. He was begging me to stop at
4 the time.

5 Q. But you didn't?

6 A. That was not the purpose.

7 Q. Well, the purpose is just to assault him
8 and shank him. You got that accomplished pretty
9 quickly.

10 A. You're not understanding the mentality of
11 the SNM. I was an SNM member. You know I got
12 criticized for this?

13 Q. Let's talk about that mentality --

14 A. Right.

15 Q. -- because you had that mentality long
16 before you were ever purportedly an SNM member.

17 A. This is the first time I attacked someone
18 with the intention of killing them.

19 Q. But you had that mentality to attack
20 somebody long before you had even entered the
21 Department of Corrections.

22 A. No.

23 Q. So when you assaulted that young man in
24 the jail over a period of days --

25 A. That's my -- I thought you were intending

1 before my incarceration period. But yes.

2 Q. Okay. So you had that mentality.

3 A. Not the killer mentality, but yes.

4 Q. Okay. Now Mr. Esparza has escaped and
5 you're sort of -- pause it for a second at 1012 at
6 934311218. Mr. Esparza has escaped temporarily.

7 A. That's correct.

8 Q. And you're behind the staircase and behind
9 the column and you're essentially regrouping?

10 A. No.

11 Q. What's happening? You let him go and
12 you're scouting him out for the second wave of the
13 attack.

14 A. No. They're shooting at me and they're
15 dispersing shotgun rounds. And that's the reason
16 why I let him go. They shot me in the leg with
17 rubber bullets. I let him go because I thought it
18 was a live round. It ripped open my shorts. And
19 I'm hiding behind a pole, because they're continuing
20 to shoot at me.

21 Q. But once you saw a way to get back to Mr.
22 Esparza, you took advantage of it?

23 A. I knew I had to.

24 Q. So the bullets weren't going to stop you?

25 A. No, not at that point.

1 Q. Play it.

2 (Tape played.)

3 Q. So you're running for cover back there.

4 A. I'm just waiting to see them reload the
5 shotgun.

6 Q. That's you?

7 A. They're reloading the shotgun at the
8 moment.

9 Q. And now this white gas coming in -- that's
10 the OC pepper spray?

11 A. That's a tear gas canister, yes.

12 Q. And they're trying to tear gas you?

13 A. Yes.

14 Q. And the only thing Mr. Esparza can do to
15 defend himself is try to get the rail --

16 A. Yes.

17 Q. -- of the staircase between you and he?

18 A. And I'm paying attention to the COs
19 lowering the shotguns in the bubble.

20 Q. So you're making sure -- you're seeing how
21 much more time you have.

22 A. I'm trying to get him away as soon as --
23 get him off the rail before they begin shooting
24 again.

25 Q. Right. You're trying to get under cover.

1 A. That's correct.

2 Q. And Mr. Esparza is doing quite a good job
3 of making sure he stays out in the open where you're
4 vulnerable.

5 A. Yes, I think he was trying to go up the
6 stairs.

7 Q. To get away from you?

8 A. Yes.

9 Q. Let's play.

10 (Tape played.)

11 Q. And this is the tear gas coming into the
12 facility?

13 A. Yes, it is.

14 Q. Or into the whole pod indiscriminately; is
15 that correct?

16 A. That's the purpose of it, yes.

17 Q. At this point, the guards aren't entering
18 the pod?

19 A. No. They're at the front door and in the
20 bubble.

21 Q. And they're sort of teaming up ready to
22 enter?

23 A. No, they do not enter at situations like
24 this.

25 Q. They're not --

1 A. Not at PNM North facility.

2 Q. They're going to let it play out?

3 A. They let it play out until the inmates
4 give up.

5 Q. So they would let you kill him.

6 A. Exactly. This is one of the only
7 facilities that they will not enter like that.

8 Q. And that's just part of the prison
9 culture?

10 A. It's the prison culture. This facility is
11 the most violent of the violent individuals in the
12 state of New Mexico.

13 Q. This Level 6?

14 A. Level 6, North facility, PNM South. It's
15 the most violent individuals.

16 MR. VILLA: Objection, lack of foundation.

17 THE COURT: Well, why don't you lay a
18 little foundation as to this?

19 BY MR. LOWRY:

20 Q. Well, this is where the Department of
21 Corrections -- there are a couple of reasons people
22 end up at Level 6; correct?

23 A. That's correct.

24 Q. And one is: In the old days, when you
25 were death-eligible, they would keep people on death

1 row in Level 6.

2 A. I wouldn't know nothing about that.

3 Q. But the other reason, they would keep
4 people who were serious violent offenders in Level
5 6?

6 A. That's correct.

7 Q. And they'd also keep people in Level 6 who
8 may be at risk of being harmed by other inmates?

9 A. Level 6 is due to -- it was conformed for
10 the SNM and violent offenders.

11 MR. VILLA: Same objection to that last
12 line of testimony.

13 Q. But there are other reasons you can be at
14 Level 6.

15 A. Yes, there is.

16 Q. And you could be at Level 6 --

17 THE COURT: I'm going to allow the answer.
18 Go ahead.

19 Q. You can be at Level 6 to protect your
20 safety.

21 A. I think there's certain -- not this
22 facility right here. This facility is for SNM, LC
23 members, and violent offenders, this unit.

24 Q. Okay. Play it.

25 (Tape played.)

1 Q. But the whole room fills up with tear gas.

2 A. Yes, it does.

3 Q. So everybody in the room gets tear-gassed?

4 A. In the pod? In their cells?

5 Q. Yes.

6 A. Yes.

7 Q. Not even that, not even your consideration
8 for the other people in the cell will stop you?

9 A. Why would I have consideration for them?

10 Q. That's my point. You didn't, did you?

11 A. No one has consideration for human life in
12 this facility.

13 Q. Including you?

14 A. Including me at this time, yes.

15 (Tape played.)

16 Q. At this point, you're on the other side of
17 the staircase?

18 A. Yes, sir.

19 Q. Can we transfer over to Exhibit AK-5?
20 This is the same pod, different angle?

21 A. Yes, it is.

22 Q. Okay, I'm going to bypass. Can you pull
23 it up?

24 (Tape played.)

25 Q. This is the staircase just from a

1 different angle, and this is after the room is
2 completely filled with tear gas; right?

3 A. That's correct.

4 Q. Okay. This is you. Again, you're trying
5 to bite Mr. Esparza's ear off.

6 A. I did.

7 Q. Okay. Go forward.

8 (Tape played.)

9 Q. And now you're trying to gouge his eyes
10 out?

11 A. No, I'm trying to get him in a head lock
12 to pull him over the rail.

13 Q. You had your fingers in his face?

14 A. No, that was Alex Sosoya.

15 Q. And so this goes on until about six to
16 eight guards come in with full gas masks?

17 A. No.

18 Q. No? You just stopped?

19 A. I stopped, yes.

20 Q. On verbal commands after you finished,
21 after you tired out?

22 A. No.

23 Q. Why did you stop? He wasn't dead.

24 A. I thought he was dead.

25 Q. Did you go back to your cell?

1 A. No, I went to the front door with my hands
2 in the air. They told me to give them the weapon.
3 I threw the weapon back into the tier. And I
4 proceeded to lay on the ground while they shot me
5 with the shotgun in the back, and they opened the
6 door and held me by the ankles and restrained me.

7 Q. Now, you told the FBI you weren't an SNM
8 member at that time?

9 A. That's what I told them, yes.

10 Q. So you lied to them --

11 A. I did.

12 Q. -- is what you're saying?

13 A. They knew I was an SNM member. It was
14 like, I guess, a running joke when I was denying it.

15 Q. So that's how you treat the truth? As a
16 running joke?

17 A. They knew, I knew, we all knew. It wasn't
18 like a secret. You know what I mean?

19 Q. Mr. Esparza never -- you never were
20 charged in that assault?

21 A. I was not.

22 Q. And he never said anything about it?

23 A. To whom?

24 Q. Anybody?

25 A. Yeah, I believe he did. He went to a

1 couple of my carnals and tried to repair his
2 relationship with the SNM and asked if it was okay
3 if he was to file a lawsuit against the Department
4 of Corrections.

5 Q. But that didn't happen?

6 A. They told him no. They told him that he
7 wasn't able to file a lawsuit because he would have
8 to testify against me.

9 Q. Well, I want to move on from the assault.
10 But the assault is a fair depiction of how you
11 were -- you know, your mentality.

12 A. At that time?

13 Q. Right.

14 A. That was my proving moment for the SNM.
15 That was to let them know I was real; let them know
16 I was down to spill blood anytime, anywhere.

17 Q. Your proving moment, then, you really
18 weren't an SNM member?

19 A. No, I was an SNM member. But you're not
20 really -- the problem with the SNM is, when they
21 recruit you, you --

22 Q. But my question is: You told the FBI you
23 weren't a member.

24 A. I told them, yes.

25 Q. You said that was a proving moment?

1 A. That was the proving moment that I was
2 real, that I was going to spill blood any time.

3 Q. Nobody knew you were real before?

4 A. They doubt you a lot. They recruit people
5 behind these doors, and --

6 Q. My question -- let's just stick with my
7 questions. Okay?

8 A. What was your question?

9 Q. And it was very simple, and you answered
10 it. That was your proving moment?

11 A. Yes, that I was a real SNM member.

12 Q. You had to prove yourself?

13 A. Yes.

14 Q. Now, you met with the FBI -- you've
15 testified differently -- but at least three times,
16 four times, five times?

17 A. I've been denying it, yes.

18 Q. You've been denying how many times you met
19 with the FBI?

20 A. That I was an SNM member?

21 Q. No, I'm asking you how many times you met
22 with the FBI.

23 A. I can't recall. Total, there may be --
24 like Mr. Villa said, I recall three. He recalled
25 more.

1 Q. Do you have to rely on Mr. Villa to
2 understand how many times you met with the FBI?

3 A. You guys have the numbers more than I do.

4 Q. Well, you were there.

5 A. Yeah.

6 Q. So you're telling this jury your memory is
7 that bad?

8 A. No, my memory is excellent.

9 Q. Then how many times did you meet with the
10 FBI?

11 A. I cannot recall.

12 Q. But during those meetings, you discussed
13 my client, Mr. Baca?

14 A. Yes. On a few of those meetings, yes.

15 Q. And you understood Mr. Baca spent some
16 time out of the state of New Mexico in Nevada?

17 A. Quite a bit, yes.

18 Q. And he came back to New Mexico and was
19 housed in the Southern facility?

20 A. He was housed at PNM North facility 1-A
21 before he was at Southern.

22 Q. But ultimately he landed at Southern?

23 A. Surprisingly, yes.

24 Q. And when he got there -- I mean, I believe
25 you told the FBI that the SNM has always been very

1 political?

2 A. From me entering the SNM, it's always been
3 very political, yes.

4 Q. And when he arrived at Southern in 2008,
5 that didn't change, did it?

6 A. It did. He started --

7 Q. It was still political, is my question.

8 A. Behind him, yes, his politics at that
9 time.

10 Q. Not everybody agreed with Mr. Baca's
11 politics?

12 A. There was rumors. I couldn't say
13 firsthand. I wasn't there. But there was rumors.

14 Q. And he had a disagreement with one inmate,
15 Jeffrey Madrid?

16 A. Yes, he did.

17 Q. And he's actually -- the SNM members had
18 expected Mr. Baca to kill Mr. Madrid because Mr.
19 Madrid had disrespected him?

20 A. He requested two inmates to kill Jeffrey
21 Madrid.

22 Q. No, my question to you is: The SNM
23 members expected Mr. Baca to kill Mr. Madrid because
24 he had disrespected Mr. Baca?

25 A. I don't know if he disrespected him. I

1 just know that he called for the murder of Jeffrey
2 Madrid.

3 Q. But the SNM wanted to kill Mr. Baca.

4 A. The SNM?

5 Q. Right.

6 A. Or Pup?

7 Q. The people at Southern wanted to hurt Mr.
8 Baca.

9 A. I do not know.

10 Q. You don't?

11 A. No.

12 Q. Okay. I thought you met with the FBI and
13 you told them that two SNM members wanted to kill
14 Mr. Baca. Benjamin Clark; correct?

15 A. And who was the second one? BB.

16 Q. Correct.

17 A. Javier Rubio?

18 Q. Bear with me for a second.

19 A. Okay.

20 Q. Actually, Benjamin Clark and Roy Martinez,
21 according to your statements to the FBI.

22 A. Yes, I heard the rumor that Roy Martinez
23 wanted to, and then I think --

24 MS. ARMIJO: Your Honor, I'm going to
25 object to rumors and foundation.

1 Q. I didn't ask you for a rumor. He didn't
2 say it was a rumor. When you talked to the FBI --

3 THE COURT: Why don't you lay a
4 foundation, because at times it did look like it
5 might have been.

6 MR. LOWRY: Sure.

7 BY MR. LOWRY:

8 Q. You spoke with the FBI on this -- the
9 statement that you couldn't remember the November
10 1st --

11 A. Right.

12 Q. -- 2017 statement. And they asked you
13 about the SNM.

14 A. They did.

15 Q. And you told them at page 2 of your
16 report -- or pardon me, at page 6 of the 11 pages of
17 the report -- that you explained to the FBI, and at
18 this point this was, I believe, Special Agent Nancy
19 Stemo?

20 MS. ARMIJO: Your Honor, can we have a
21 Bates stamp?

22 MR. LOWRY: Sure. 31664.

23 MS. ARMIJO: All right.

24 BY MR. LOWRY:

25 Q. -- that Benjamin Clark and Roy Martinez

1 wanted to kill --

2 MS. ARMIJO: Objection, foundation.

3 THE COURT: Lay a foundation for this
4 information.

5 MR. LOWRY: Okay.

6 BY MR. LOWRY:

7 Q. Well, the folks at Southern anticipated
8 this disagreement between Mr. Baca and Jeffrey
9 Madrid to spill over into violence; correct?

10 A. Due to his request of --

11 Q. No, it's really simple.

12 A. It's not --

13 Q. Yes or no?

14 A. I don't think it's a simple --

15 Q. Ms. Armijo can work with this on redirect.

16 A. Okay.

17 Q. The question is that membership expected
18 that relationship to spill over into violence.

19 A. Yes.

20 Q. And it didn't?

21 A. Did not.

22 Q. Because Mr. Baca squashed it, in your
23 words?

24 A. Because he didn't want to go to Level 6,
25 he squashed it.

1 Q. So he said, "No violence"?

2 A. I guess he shook hands and hugged, and
3 whatever.

4 Q. Right.

5 A. Yeah.

6 Q. And because of that, Mr. Baca was kited
7 out to Level 6?

8 MS. ARMIJO: Objection, foundation.

9 THE COURT: Lay a foundation how he's
10 going to know that.

11 BY MR. LOWRY:

12 Q. Well, I believe you said at one point you
13 were in Level 6 with Mr. Baca?

14 A. Right.

15 Q. In 2011?

16 A. In X pod, yes.

17 Q. And so you knew how he got to Level 6 --

18 MR. LOWRY: May the record reflect that
19 he's looking at the prosecution table?

20 A. I don't know what's going on.

21 MR. LOWRY: May the record reflect he's
22 looking at the prosecution table again for an
23 answer?

24 MS. ARMIJO: I'm standing up to object,
25 Your Honor.

1 THE COURT: Hold on. The jury will make
2 its own inference. Let's not comment on it. They
3 can decide what's going on here.

4 Do you have an objection, Ms. Armijo?

5 I think you're going to have to ask if he
6 has personal knowledge of these questions before I
7 allow him to answer them.

8 BY MR. LOWRY:

9 Q. Do you have personal knowledge of how Mr.
10 Baca got to Level 6?

11 A. Yes, I do.

12 Q. And that's because, would you agree with
13 me, the people that were living in Southern didn't
14 want him there?

15 A. That's what Anthony Baca told me, yes.

16 MS. ARMIJO: Objection, Your Honor. Now
17 it's self-serving hearsay.

18 MR. LOWRY: I didn't elicit hearsay. He
19 said he had personal knowledge.

20 THE COURT: Well, if it came from
21 Mr. Baca, then I strike it from the record. The
22 jury will ignore that answer.

23 BY MR. LOWRY:

24 Q. My question is: Do you have personal
25 knowledge about why he was sent to Level 6?

1 A. I guess not, no.

2 Q. But you knew he was at Level 6?

3 A. Yes. I lived with him.

4 Q. Because he was no longer at Southern?

5 A. I lived with him at Level 6; correct.

6 Q. Now, there was always dissension within
7 the SNM on the politic side of things?

8 A. Is that a question?

9 Q. It is. You would agree with me that there
10 was always political dissension?

11 A. Yeah, there's politics.

12 Q. And you even told the FBI the second time
13 you met them, on November 1st, you told Agent Stemo
14 that for as long as you've known the SNM, things
15 have been very political and there's a lot
16 infighting?

17 A. There is.

18 Q. So not everybody gets along?

19 A. As in life, no.

20 Q. Okay. I want to move on and talk to you
21 about the Molina allegations.

22 A. Okay.

23 Q. You told the FBI when you met with them
24 that Mr. Baca and Javier Molina were friends?

25 A. I don't recall that, but --

1 Q. You don't recall that?

2 A. No.

3 Q. You said Mr. Baca liked Mr. Molina?

4 A. I never got his personal, I guess,
5 relationship to him, but I guess I would assume so.
6 They lived together.

7 Q. And you told the FBI that Mr. Molina
8 agreed with Mr. Baca's politics?

9 A. Do you have that?

10 Q. I do.

11 MR. LOWRY: May I approach, Your Honor?

12 THE COURT: You may.

13 BY MR. LOWRY:

14 Q. I'm looking at page -- right here you
15 said, "Mr. Baca liked Molina"?

16 A. Because -- can you continue?

17 Q. "Because Molina bought into the proposed
18 changes." Baca liked Molina?

19 A. Can you read the whole paragraph to me?

20 Q. Sure.

21 A. That started from the other page.

22 THE COURT: I tell you what, Mr. Lowry.
23 Can we do this after the break? We've been going
24 for a while.

25 MR. LOWRY: Certainly.

1 THE COURT: Let's be in recess for about
2 15 minutes. All rise.

3 (The jury left the courtroom.)

4 THE COURT: All right. We'll be in recess
5 for about 15 minutes.

6 MR. VILLA: Your Honor, you want do this
7 after -- Mr. Candelaria, from the federal public
8 defenders, has been coming in and out. I believe he
9 represents Mario Montoya. So we would ask he be
10 excluded under the rule, as well. I think he might
11 be in the hallway at this point.

12 THE COURT: All right. Tell him to step
13 in here when he's not here. Probably with
14 Mr. Candelaria, I'll just give him -- get a
15 representation that he's not going to be a conduit
16 and talk to his client about what's being done here
17 in the courtroom.

18 MR. VILLA: Yes, Your Honor.

19 THE COURT: All right. We'll see y'all in
20 about 15 minutes.

21 (The Court stood in recess.)

22 THE COURT: All right. Let's go on the
23 record. Is Mr. Candelaria there? Why don't you see
24 if he's out there.

25 Refresh my memory who Mr. Candelaria

1 represents?

2 MS. DUNCAN: Mario Montoya, Your Honor.

3 THE COURT: While we're waiting, anything
4 we need to discuss before we bring the jury in?

5 MS. DUNCAN: Your Honor, I can raise
6 something quickly. This issue of cooperators'
7 lawyers going in and out of the courtroom quite a
8 bit. I saw Marcia Milner yesterday, but I didn't
9 want to interrupt the proceedings to draw it to the
10 Court's attention. I'm not sure how we should
11 proceed. She represents Roy Martinez.

12 THE COURT: If y'all have any law on this
13 to exclude attorneys, I've not had that experience
14 or problem. I think with people like from the
15 public defender's office, if they make a
16 representation they're not going to be a conduit, I
17 think I can rely on that. But if y'all have got
18 some law that I ought to be excluding attorneys, I'd
19 be glad to take a look at it. I just haven't done
20 that in the past. With our bar, I usually know the
21 lawyers and can take their word for it.

22 MS. DUNCAN: We have a specific reason to
23 deviate from that, but even for Ms. Milner, I would
24 want you to caution her.

25 THE COURT: I'd be glad to do it. Anybody

1 you want me to. I excluded one attorney. But I
2 couldn't figure out what she was doing here after
3 her client testified. So there was no specific
4 reason there.

5 MS. ARMIJO: I think there is reason after
6 their clients testify, because for sentencing
7 purposes, they want to know what the Court has seen
8 about their client. Mr. Urquizo's name is going to
9 come up over and over again.

10 THE COURT: But Urquizo had already
11 testified.

12 MS. ARMIJO: Correct. But I think his
13 name and testimony about him will still continue.

14 THE COURT: Well, I'm not going to
15 probably pay for all the attorneys to sit in the
16 back of the courtroom here. So I'm going to monitor
17 that.

18 MS. ARMIJO: Oh, and that's a different
19 issue.

20 THE COURT: So I'm going to -- I'll be a
21 little bit lenient, but I'm not going to have
22 everyone in this case sitting in the back of the
23 courtroom and billing for it.

24 Is he out there?

25 MR. MICKENDROW: We're checking to see if

1 he's in the courtroom next door, Your Honor. But he
2 was not in the hallway.

3 THE COURT: All right. Anything else?
4 All rise.

5 (The jury entered the courtroom.)

6 THE COURT: All right. Everyone be
7 seated.

8 All right, Mr. Rodriguez, I'll remind you
9 that you're still under oath.

10 THE WITNESS: Yes, sir.

11 THE COURT: Mr. Lowry, if you wish to
12 continue your cross-examination of Mr. Rodriguez,
13 you may do so at this time.

14 MR. LOWRY: I do, Your Honor.

15 THE COURT: Mr. Lowry.

16 BY MR. LOWRY:

17 Q. Mr. Rodriguez, I want to step back for a
18 second and just revisit the Esparza video that we
19 just saw.

20 A. Okay.

21 Q. So you never were charged criminally with
22 that?

23 A. No, I was not.

24 Q. And the folks over here at the United
25 States table -- they didn't charge you?

1 A. No, they did not.

2 Q. And they could have?

3 MS. ARMIJO: Objection, foundation.

4 THE COURT: Why don't you ask if he knows
5 the charges?

6 BY MR. LOWRY:

7 Q. Do you know whether they could have?

8 A. I do not know.

9 Q. Do you know that it's a crime to lie to
10 the FBI?

11 A. I'm sure it is, yes.

12 Q. Did you get charged with lying to the FBI?

13 A. No, I have not.

14 Q. Now, you had mentioned that you had lived
15 at Level 6 and had met Mr. Baca there in 2011?

16 A. That's correct.

17 MR. LOWRY: And Your Honor, I believe that
18 the United States agrees that we can admit Exhibit
19 V-25?

20 THE COURT: Any objection, Ms. Armijo?

21 MS. ARMIJO: Oh, yes. No objection.

22 THE COURT: Any objection from any
23 defendant?

24 MR. VILLA: No, Your Honor.

25 THE COURT: All right. Not hearing any

1 objection, Defendants' Exhibit V-25 will be admitted
2 into evidence.

3 (Defendants' Exhibit V-25 admitted.)

4 MR. LOWRY: Okay. May I approach, Your
5 Honor?

6 THE COURT: You may.

7 BY MR. LOWRY:

8 Q. Mr. Rodriguez, I'm just going to ask you
9 to read this to yourself.

10 A. Okay. I want to start it at page 4,
11 because it's not a full paragraph.

12 Q. Let's just read it silently to yourself.
13 It's right there, three lines.

14 MS. ARMIJO: May I have a reference?

15 Q. Mr. Rodriguez, I'm going to ask you a very
16 simple yes-or-no question. You told the FBI that
17 Baca liked Molina.

18 A. I don't think I could answer that question
19 without the whole paragraph being read.

20 Q. But you did say Baca liked Molina?

21 A. For certain reasons, yes.

22 Q. And you also told the FBI that if Baca had
23 been living in Southern, that he could have stopped
24 or would have stopped the Molina murder?

25 A. I think --

1 MS. ARMIJO: Objection, foundation.

2 Q. You spoke with the FBI on November -- on
3 October 24, 2007; correct?

4 A. 2007?

5 Q. 2017, pardon me.

6 A. Come on, man.

7 Q. Come on.

8 THE COURT: I'll let him answer the
9 question yes as to whether he told the FBI. But if
10 he's going to testify about that --

11 MR. LOWRY: That's all I'm asking, is a
12 yes-or-no question. I'm not trying to get the
13 editorialization that the witness loves to add.

14 BY MR. LOWRY:

15 Q. These are simple questions, yes or no,
16 Mr. Rodriguez.

17 A. You have to read the whole paragraph.

18 Q. I don't have to read the paragraph.

19 A. I can't answer the question.

20 Q. So you don't remember?

21 A. Read it.

22 Q. Do you remember talking to the FBI on
23 October 24, 2017?

24 A. Yes.

25 Q. Do you remember talking to them about how

1 Mr. Molina died?

2 A. How he was killed?

3 Q. Yes.

4 A. Yes.

5 Q. Do you remember telling them that Baca
6 would have stopped the hit if he'd have been at
7 Southern New Mexico Correctional Facility?

8 A. Can you read the whole paragraph?

9 Q. It's a yes-or-no question, Mr. Rodriguez.

10 A. That's part of the paragraph -- the
11 statement that I made, yes.

12 Q. Did you make that statement?

13 A. I did.

14 Q. Okay. Let's talk about the Julian Romero
15 allegations. You had mentioned Gerald Archuleta in
16 your testimony with Mr. Villa?

17 A. That's correct.

18 Q. And you knew Mr. Archuleta.

19 A. Yes, I did.

20 Q. And you've written to Mr. Archuleta.

21 A. I've written to him before, yes.

22 Q. And you knew that Julian Romero had stole
23 Gerald Archuleta's wife, for lack of a better way to
24 say it?

25 A. I don't know all the details, but yes, I

1 know -- I'm aware of the situation.

2 Q. And you knew that Mr. Archuleta wanted Mr.
3 Romero killed?

4 A. I don't know firsthand, but that's -- I
5 can't say I was given that firsthand. But through
6 SNM bylaws, yes, that Styx would want him killed,
7 yes.

8 Q. Well, that's just not SNM bylaws; it's a
9 bit of human nature that's -- from time immemorial,
10 people don't like it when somebody steals their
11 wife, do they?

12 A. But you don't go and kill them.

13 Q. Well --

14 A. That's SNM bylaws. You're not supposed to
15 mess with other people's women.

16 Q. Well, let's talk about the SNM bylaws for
17 a second. The SNM bylaws were that you owed
18 everybody a duty of loyalty; correct?

19 A. Correct.

20 Q. And you told the FBI you knew that
21 Benjamin Clark wanted to kill Mr. Baca?

22 MS. ARMIJO: Objection, calls for hearsay.

23 MR. LOWRY: This doesn't call for hearsay.
24 That's what he testified to.

25 THE COURT: This is not being admitted for

1 the purposes of hearsay. It's just to find out
2 whether he told that to the FBI. So --

3 A. I believe I told --

4 THE COURT: Hold on --

5 THE WITNESS: I'm sorry.

6 THE COURT: The jury cannot consider this
7 statement for the truth of the matter. All right.

8 Mr. Lowry?

9 BY MR. LOWRY:

10 Q. And that would violate SNM bylaws.

11 A. Can you ask me the question again? What
12 would violate the SNM bylaws?

13 Q. Disloyalty.

14 A. Yes.

15 Q. But nobody did anything to Benjamin Clark.

16 A. Those are SNM politics.

17 Q. Those are --

18 A. If the right person would have got ahold
19 of that information --

20 Q. I'm just asking you a simple question.

21 A. The simple questions don't have simple
22 answers.

23 Q. Well, you can explain it later with Ms.
24 Armijo.

25 A. Okay.

1 Q. But my question was simple. You knew that
2 Mr. Archuleta, Gerald Archuleta, wanted Mr. Romero
3 killed.

4 A. Yes. The SNM wanted Julian Romero killed.
5 Yes.

6 Q. My question is very simple. Please don't
7 complicate it. You knew that Mr. Archuleta wanted
8 Mr. Romero killed.

9 A. That's correct.

10 Q. And you thought that the beating he got
11 was too light?

12 A. That's correct.

13 Q. You thought he should be sliced or cut
14 with a razor?

15 A. Razor blade, yes, at the least.

16 Q. So you thought Mr. Romero got off easy?

17 A. According to the SNM rules, yes, he got
18 off easy.

19 Q. According to you.

20 A. I'm an SNM member, yes.

21 Q. According to Mario Rodriguez?

22 A. Amongst other SNM members, yes, that's
23 correct.

24 Q. Do you stand ever by yourself?

25 A. I have not. I've been an SNM member and a

1 gang member all my life.

2 Q. So you have no independence?

3 A. This is the first time in my life I'm
4 taking on that opportunity.

5 Q. Truth be told, you weren't an SNM member
6 your whole life, were you?

7 A. No, but I was a gang member all my life,
8 which I just told you.

9 Q. And you started off your testimony with
10 something that was pretty curious to me. You said
11 you are an SNM member.

12 A. I am.

13 Q. But you can't be.

14 A. Well, I'm no longer an SNM. I guess I'm a
15 SNM fucking drop-out, I guess.

16 Q. So that's my point.

17 A. Yeah.

18 Q. It's pretty binary. This is my point I've
19 been driving at. It is binary. It's yes or no.

20 A. What is yes or no?

21 Q. You're not an SNM member.

22 A. No, I'm no longer an SNM member.

23 Q. So when you got on the stand and you said,
24 "I am an SNM member," that wasn't entirely correct,
25 was it?

1 A. Well, I still look at myself as SNM, you
2 know. Everyone looks at me as SNM, still. Even the
3 Department of Corrections still looks at me as SNM.

4 Q. Well, you are a former --

5 A. A former member.

6 Q. You believe you're a former; you're not
7 SNM.

8 A. Maybe it's just habit that when I'm
9 telling you that I'm an SNM member, that that's what
10 I was, and this is all new to me. I barely decided
11 to cooperate October 24. So sorry if I still think
12 I'm an SNM member.

13 Q. Now, we talked about this briefly, but you
14 debriefed with the FBI, the prosecution, a number of
15 times. So you can't remember how many, if I
16 understood your testimony correctly.

17 A. I can give you a rough number, around
18 maybe three to five, maybe, if you guys want a
19 number. I couldn't give you have the dates. And
20 even when you mentioned October 24 and November 1st,
21 I get them confused.

22 Q. Okay. But you know from your study of the
23 tablet everything about this case; correct?

24 A. About what case?

25 Q. This case, all the discovery.

1 A. Which one are we talking about?

2 Q. Well --

3 A. Because there's a lot of cases involving.

4 Q. Let's talk about the allegations against
5 Mr. Baca for the Gregg Marcantel.

6 A. Yes, I was present during those times,
7 yes.

8 Q. But my point is: You studied the tablets;
9 correct?

10 A. I went through them. I reviewed them.

11 Q. And you listened to all the audio
12 recordings on the tablets?

13 A. Skipped through them.

14 Q. You skipped through them?

15 A. Yeah. I didn't listen to full ones
16 completely. I was looking for if members were
17 talking about other members.

18 Q. But when you met with the FBI on October
19 24, you didn't tell them anything about the
20 allegations that are on the table about Mr.
21 Marcantel?

22 A. No, I didn't. I don't think we got around
23 to it, which I told them I knew specific things, but
24 I thought they were going to ask me about it, and I
25 never got into it. There was so much to talk about

1 with the Molina.

2 Q. And even the second time you sat down with
3 them in January to report, you said you might have
4 heard about it, but you had no details?

5 A. No, I heard about it. I didn't have
6 intimate details, but I stayed away from that case.

7 Q. Right. Because you thought it was stupid?

8 A. I thought it was pretty stupid, yes.

9 Q. Now, my point is: In the final debrief
10 you had with the FBI you said, "Hey, I can tell you
11 about that."

12 You talked about specific conversations
13 you had with Mr. Baca.

14 A. That's correct.

15 Q. But you told the FBI that all of those
16 conversations happened out in the recreation yard?

17 A. In the first two handball cages, I think
18 it was one conversation, yes.

19 Q. By the time of that third debrief, you
20 understood from your review of the tablet for two
21 years that that was the only place where Mr. Baca
22 wasn't being recorded?

23 A. No, I did not know he was recorded. Oh,
24 are you talking about after I read the tablet?

25 Q. Correct.

1 A. Well, yeah. I think there was no other
2 places we could speak when we weren't being
3 recorded.

4 Q. You're aware that there are recordings of
5 you talking to Mr. Baca.

6 A. There is, yes.

7 Q. On your direct testimony, it seemed like
8 you implied that there was no way out of SNM until
9 the FBI asked you to cooperate.

10 A. I never seen a real opportunity to get
11 out.

12 Q. But you could have gone into the RPP
13 Program?

14 A. I could have, yeah.

15 Q. And you could have just knocked on the
16 door and said, "Hey, I want to PC"?

17 A. At the time that the RPP Program was going
18 on, I was being charged at the state level on the
19 Molina case, you know. And you've got to remember
20 the way you guys painted have me is the way the
21 Department of Corrections used me, as well.

22 Q. I'm not painting you. I just asked a
23 simple question.

24 A. I would have stayed in solitary
25 confinement for the rest of my sentence, because

1 they wouldn't have let me out.

2 Q. But there were ways out, is my point.

3 A. They're not as easy as you make them seem
4 to be.

5 Q. Well, and there's also another way out
6 that you told the FBI about, is there was a
7 religious exception for folks that were members that
8 would say, "Due to my religious beliefs, I'm
9 dropping out"?

10 A. Those guys, that's not -- I don't know. I
11 don't -- there's a way you can go religion, yeah.
12 You can. You still live around the SNM, though.

13 Q. Well, you didn't have to. You could have
14 gone into the RPP Program or you could have gone
15 into PC. There are ways out. You just didn't like
16 exercising them. Isn't that true?

17 A. This is the only opportunity I have to get
18 completely out and can never go back.

19 Q. So this is the only opportunity you have
20 to avoid being charged with crimes like the Esparza
21 crime.

22 A. I think the timelines for the Esparza
23 crimes are up, unless I was charged with RICO
24 overlaps.

25 Q. And you could be.

1 A. I still could be. I think that's what the
2 5K protects me from, though.

3 Q. And that's a benefit you get with your
4 cooperation.

5 A. Exactly.

6 Q. And that's something you want. You want
7 those benefits, don't you?

8 A. At the time, I have never really cared
9 about --

10 Q. You want the benefits today?

11 A. Today?

12 Q. Today.

13 A. Since Mr. Villa made it out in the open
14 that I may get two years, yeah, I would enjoy that.

15 Q. Now, one other question I had about your
16 comments about the SNM. You said that the SNM had
17 never been able to tax other inmates for drug
18 distribution.

19 A. Is that a question?

20 Q. Yeah. You told the FBI that the SNM
21 didn't tax anybody for bringing drugs inside a
22 facility.

23 A. Again, is that a question? It sounds like
24 a statement.

25 Q. It is. Did you tell the FBI that the SNM

1 was never able to tax other inmates involved in drug
2 sales?

3 A. They didn't necessarily tax, that it was
4 never a really coming to you and telling you, "Hey,
5 you're going to live here and you're going to pay
6 taxes."

7 Q. Do you remember the FBI asking you this
8 simple question? Has the SNM ever been able to tax
9 other inmates involved in drug sales?

10 A. I think I remember that, yes.

11 Q. And you answered no?

12 A. No. Yes.

13 Q. They were never able to.

14 A. They were able to, but not in the form of
15 taxes like you're alleging.

16 Q. I didn't allege it. It's the FBI's
17 question.

18 A. Yeah.

19 Q. So Mr. Rodriguez, you didn't opt to leave
20 the SNM until -- you could have opted for the PC,
21 protective custody; correct?

22 A. No.

23 Q. You could have opted for protective
24 custody.

25 A. According to who?

1 Q. According to knocking on the door and say,
2 "I need to get out of here."

3 A. It wasn't in my interests.

4 Q. That's my point. It wasn't in your
5 interests until you could reduce your prison
6 exposure to get out.

7 A. Until I seen that the discovery made a lot
8 of these individuals living the life that they
9 portrayed when they weren't living it to the fullest
10 extent that I was. That's why I left.

11 Q. You could have gotten out with a religious
12 exemption?

13 A. You got to remember, I was in the SNM 100
14 percent.

15 Q. You could have gotten out with the RPP
16 Program?

17 A. That's not my mentality.

18 Q. Your mentality is to get the benefits?

19 A. My mentality is: I'm in 100 percent or
20 I'm not in at all. If I'm going to read the Bible,
21 I'm going to be a chaplain and be 100 percent.
22 Anything I do, there is no half-stepping with me. I
23 made the decision to be completely loyal to the SNM,
24 and I did the best I could be. And changing my life
25 now, I have no opportunity but to go forward and

1 commit myself 100 percent to my cooperation and
2 changing my life. That's my mentality. So going to
3 RPP around and --

4 Q. Mr. Rodriguez, let me just ask you a
5 simple question. You said you're in 100 percent or
6 you're in zero?

7 A. Exactly.

8 Q. Okay. On October 24, you made a decision
9 to talk with the FBI.

10 A. I did.

11 Q. You lied to them, didn't you?

12 A. According to you, yes.

13 Q. According to you?

14 A. Yes, I did. I lied to them.

15 MR. LOWRY: No further questions, Your
16 Honor.

17 THE COURT: Thank you, Mr. Lowry.

18 Ms. Jacks, do you have cross-examination
19 of Mr. Rodriguez?

20 MS. JACKS: I do.

21 THE COURT: Thank you, Ms. Jacks.

22 CROSS-EXAMINATION

23 BY MS. JACKS:

24 Q. Mr. Rodriguez, I'm going to pick up where
25 Mr. Lowry left off, because I'm just a little bit

1 confused.

2 A. Okay.

3 Q. Yesterday you told us on direct
4 examination that you were SNM?

5 A. Yes, ma'am.

6 Q. Right. I'm not misunderstanding that
7 testimony, am I?

8 A. I believe I told the FBI on Saturday I
9 was, as well.

10 Q. Okay. But that's not what you told the
11 FBI back on October 24 of 2017, when you're saying
12 you first made the decision to become a Government
13 witness.

14 A. That's correct.

15 Q. Back on October 24 you told the FBI --
16 sorry. I've just got to get kind of organized here.
17 You told the FBI that back in 2005 the SNM attempted
18 to recruit you?

19 A. Yes.

20 Q. Right. And that was -- you had done
21 something; right? Do you remember what you'd done?

22 A. In 2005?

23 Q. Yeah.

24 A. What did I do?

25 Q. You'd assaulted a correctional officer.

1 A. Oh, yes.

2 Q. And after that assault -- you told the FBI
3 that after that assault, the FBI -- excuse me, the
4 SNM had tried to recruit you.

5 A. Right. That was --

6 Q. And you never really heard what happened,
7 but you'd heard a rumor that you'd been shot down
8 for some reason.

9 A. That's correct.

10 Q. And I'm assuming the rumor that you'd been
11 shot down was based on the fact that there was some
12 question about the charges that you were imprisoned
13 on.

14 A. I can assume that.

15 Q. Okay. Well, they were charges of criminal
16 sexual penetration; right?

17 A. Two counts.

18 Q. Rape on another inmate at a county jail?

19 A. That's correct.

20 Q. And so it was your thought back in 2005
21 that they shot you down because people that commit
22 rapes aren't supposed to be admitted into prison
23 gangs?

24 A. Yes. They didn't know the full extent of
25 the charge at that time.

1 Q. And then what you told the FBI back in
2 October of 2017 was that at some point after that,
3 you got moved to another pod where there were Los
4 Carnales prison gang members?

5 A. There was three Los Carnales prison gang
6 members and two SNM members.

7 Q. And that the Los Carnales members tried to
8 recruit you to join their prison gang?

9 A. No.

10 Q. You didn't tell that to the FBI back in
11 October?

12 A. I told them a friend named Joseph
13 Sifuentes was pushing me to get schooling from
14 Diablo, from Los Carnales, and asking Diablo to, I
15 guess, teach me things. But no, they never came out
16 and recruited me.

17 Q. Did you tell the FBI on October 24 of 2017
18 that, "Gang members, first name unknown, last name
19 unknown, but known as Diablo" --

20 A. Right.

21 Q. "Tyson, last name unknown, and a gang
22 member named Alf" were living with you in a pod?

23 A. That's correct.

24 Q. And that they were associated with the Los
25 Carnales prison gang?

1 A. That's correct.

2 Q. And did you tell them that your friend
3 Joseph Sifuentes, also known as Snuffy, started
4 pushing you to join the Los Carnales?

5 A. That's false. That's a misinterpretation
6 of that.

7 Q. Let's just be clear. Did you tell that to
8 the FBI on October 24, 2017?

9 A. No.

10 Q. Okay. Have you reviewed -- had an
11 opportunity to review some of the reports the FBI
12 has written regarding your statements?

13 A. Which day is that? From October 24?

14 Q. October 24.

15 A. That's the one that I skimmed through.

16 Q. So you did have a chance to review it?

17 A. That's correct.

18 Q. And when you reviewed it, did you make a
19 correction? Did you see that statement, first of
20 all, the statement that Joseph Sifuentes, also known
21 as Snuffy, started pushing you to join the Los
22 Carnales?

23 A. It's Snorty.

24 Q. Not Snuffy?

25 A. As you can see, you know what I mean,

1 there are mistakes in there.

2 Q. Did you review that report?

3 A. How long is that report? I think 11
4 pages? I think it has a number on the top corner,
5 doesn't it?

6 Q. That report is nine pages.

7 A. I think I skimmed through that one.

8 Q. Did you make any corrections to that part
9 of the report?

10 A. I did not.

11 Q. But your testimony today is that the FBI
12 got it wrong?

13 A. Yes.

14 Q. That they got the name of the guy wrong?
15 It was not Snuffy, it was --

16 A. Snorty.

17 Q. -- Snorty. And they got it wrong that he
18 pushed you to join the Los Carnales?

19 A. He was pushing me to speak to Diablo and
20 Alf and Tyson in order to get schooling from him,
21 because he was close to Diablo.

22 Q. The report actually attributes two things
23 to the person that you're saying is known as Snorty,
24 that he started pushing you to join the Los
25 Carnales.

1 A. Not join.

2 Q. That's wrong?

3 A. Yes.

4 Q. But the part where he said he wanted you
5 to talk to Diablo about how to make shanks -- that's
6 right?

7 A. Not how to make shanks at that time, no.
8 Diablo taught me to make shanks later.

9 Q. Was Snorty asking you to talk to Diablo?

10 A. Pushing me in that direction.

11 Q. To get that schooling?

12 A. Eventually, yes, I believe so.

13 Q. So part of that statement is wrong,
14 according to you, and part of it is right?

15 A. Yes.

16 Q. Did you tell the FBI back on October 24
17 that you were never voted into the SNM?

18 A. I believe -- October 24?

19 Q. Yes.

20 A. Yes, I was denying I was an SNM member.

21 Q. Did you tell them you never actually
22 earned your bones?

23 A. That's what I told them, yes.

24 Q. Did you also tell them that what happened
25 was that some people that you were housed with,

1 specifically Robert Martinez, Lupe Urquizo, and
2 David Calbert, started just calling you carnal?

3 A. I told them that -- I think in that one --
4 read the first part you told me before.

5 Q. Did you tell them that Robert Martinez,
6 Lupe Urquizo, and David Calbert just started calling
7 you carnal?

8 A. No. I said David Calbert in the yard one
9 day was calling me carnal out of nowhere, and I
10 didn't shut him down because I don't want to be
11 disrespectful. Because the minute you shut down,
12 and you say, "Hey, I'm not your carnal," it comes
13 off as you're being hateful to the SNM. So I just
14 let it go.

15 Q. So what you told him back on October 24
16 was that you started being called a name or called a
17 term that would be used to refer to other SNM
18 members?

19 A. I think that interview is before I
20 debriefed; right?

21 Q. Well, that's October 24 --

22 A. Right. Is that after I signed the
23 Kastigar?

24 Q. I think that's the day you did.

25 A. Yeah, I think prior to that, I was denying

1 that. That's why that may be in there.

2 Q. Let's just answer the question. And the
3 question is: Did you tell them that David Calbert
4 just started calling you "carnal," and that you
5 never corrected him?

6 A. That's correct.

7 Q. Okay. Now is that the truth or a lie?

8 A. That was the truth. He did start calling
9 me carnal out of nowhere.

10 Q. And were you truthful to the FBI on
11 October 24, 2017, when you told them that you were
12 never voted in, or earned your bones, or were
13 officially in the SNM?

14 A. That was a lie.

15 Q. So you lied to the FBI on October 24?

16 A. Yes, ma'am, I did.

17 Q. Now, you're aware, as I think it was
18 brought out in the last line of questioning, that
19 that's actually a crime: Lying to the FBI?

20 A. I guess I'll be getting an indictment,
21 huh?

22 Q. People have gone to jail. Martha Stewart
23 went to jail for that.

24 A. Looks like I'm already there, ma'am.

25 Q. So I want to talk to you a little bit

1 about Javier Molina, okay? Because shortly -- you
2 moved to Southern New Mexico Correctional Facility
3 sometime in December of 2013?

4 A. I believe so.

5 Q. Do I have that right?

6 A. That sounds about correct.

7 Q. And shortly after you moved there, you
8 wanted Mr. Molina killed, didn't you?

9 A. I wanted Efrain Martinez and Timothy
10 Martinez to assault him, yes.

11 Q. You actually wanted him killed, didn't
12 you?

13 A. I told them to go beat him up.

14 Q. Did you tell the FBI on October 24, 2017,
15 that after you were moved to the Southern New Mexico
16 Correctional Facility, you were high on meth and
17 tried to get Molina hit?

18 A. That's correct.

19 Q. At that point, what was your issue with
20 Molina?

21 A. I had known that the paperwork was on its
22 way, and I would -- I got high on meth, and me and
23 him got into an argument.

24 Q. Over what?

25 A. I think it was over -- I was up for four

1 days, and I thought people were talking shit about
2 me.

3 Q. So you knew, based on your conversations
4 with other people -- it was in your mind that you
5 thought he was a rat?

6 A. I knew he was a rat.

7 Q. And then you were using drugs and getting
8 paranoid. Meth makes you paranoid; right?

9 A. Exactly.

10 Q. You were up for four or five days, I think
11 you said?

12 A. I was up for a total of five days.

13 Q. And you thought he had done something
14 to -- flesh it out for me. So what did he do?

15 A. Well, you start hallucinating. And I was
16 up for five days. And I was at my door watching him
17 and watching another individual named Dale Chavez.
18 And I was just thinking that they were saying,
19 "We're going to get him later. We're going to get
20 him."

21 I told them, "Come to my fucking door.
22 Come get me." Opened my door. He comes. "What are
23 you tripping on?"

24 I told him, "I'm tripping on you."

25 And I had a weapon in my hand. And I told

1 him, "Open my door."

2 He told me, "God bless you," and he walked
3 away.

4 Then I started hollering at the other
5 carnals, "That's not a real SNM member, that fucker
6 is a sissy. I'm a real SNM member."

7 And he locked down in his room. That was
8 it. And then I started tripping on Jerry Montoya
9 while he was in his room.

10 Q. Let me stop you there, because I think you
11 answered the question. I can't let you go on.

12 A. Okay.

13 Q. The point is that after that situation
14 happened, you tried to get Efrain Martinez and
15 Timothy Martinez to kill or hit Molina for you;
16 right?

17 A. Assault him, yes.

18 Q. And that was based on your perception that
19 somehow he had it out for you, at least in part.

20 A. I was -- yeah, I was hallucinating.

21 Q. And also in part on your perception that
22 he was -- or your thought that he was a rat?

23 A. I was told he was a rat, yes.

24 Q. And Efrain Martinez and Timothy Martinez
25 said, "We're not doing this unless you show us some

1 kind of paperwork."

2 A. Efrain Martinez sent me a letter, said
3 that, "I'm not going to fuck up my career, so I need
4 to see the paperwork first."

5 Q. Now, I want to talk to you a little bit
6 about Daniel Sanchez.

7 A. Okay.

8 Q. I think you said, based on your testimony
9 yesterday, you actually knew him before you got
10 transferred to Southern in December of 2013?

11 A. Very well.

12 Q. And when you got down there to Housing
13 Unit 1-AB pod, he was there?

14 A. Yes.

15 Q. When you got down there, you heard --
16 you'd heard from other inmates that he'd had some
17 sort of conflict with Javier Molina and Timothy
18 Martinez?

19 A. Yes.

20 Q. Like over a handball game or something?

21 A. Do you want me to elaborate?

22 Q. Did you hear that he had a conflict with
23 him about something that happened in the rec yard?

24 A. I did hear that.

25 Q. And that instead of physically acting out

1 on that conflict, that Mr. Sanchez had talked it
2 out, talked the issue out with him, and had resolved
3 it through talking?

4 A. No.

5 Q. Did you believe that the way that you were
6 told Mr. Sanchez handled that conflict made him look
7 weak?

8 A. The way --

9 MS. ARMIJO: Objection. Calls for hearsay
10 and foundation.

11 THE COURT: Well, I think this is more his
12 thoughts, so his state of mind. So I'll allow it.
13 Overruled.

14 BY MS. JACKS:

15 Q. Do you understand the question?

16 A. Go ahead and do it again.

17 Q. Yeah. You heard some stuff about Mr.
18 Sanchez and this conflict with Molina and Timothy
19 Martinez?

20 A. Yes, I had.

21 Q. And when you heard about it, and you heard
22 about how Mr. Sanchez handled it, did you think that
23 that made Mr. Sanchez look weak?

24 A. I didn't necessarily believe it at first.
25 You got to remember, Dan Dan was someone I looked up

1 to.

2 Q. Okay. But my question is: Did you think,
3 in your mind, that if that's what he did, he looks
4 weak?

5 A. I didn't even believe it at the time. I
6 just let it go as politics, and I didn't even go ask
7 Timothy Martinez about it when I was told about it
8 at that time.

9 Q. Let me just see if I can find -- was there
10 a situation that developed at Southern after you got
11 there where another -- the same inmate that you had
12 tried to get to help you kill Molina, Efrain
13 Martinez, pointed out an individual that he thought
14 was a drop-out, a PC, at a Level 4 prison?

15 A. That's correct. Hold on. Will you
16 rephrase that? Say it again?

17 Q. I'm sorry?

18 A. Ask me that question again.

19 Q. I said: After you got to Southern, did a
20 situation develop where another inmate, this guy,
21 Efrain Martinez --

22 A. Right.

23 Q. -- pointed out to you an individual who he
24 said had been a drop-out at a -- or PC inmate at
25 another prison?

1 A. No.

2 Q. Was there somebody that Efrain pointed out
3 as an individual who had gone into PC at a Level 4
4 prison?

5 A. Daniel Sanchez pointed him out.

6 Q. Did you tell the FBI on October 24, 2017,
7 that Efrain Martinez pointed him out?

8 A. That's incorrect. That's a mistake in
9 there.

10 Q. So that's another mistake in that report
11 that you reviewed but didn't correct?

12 A. Yes, ma'am.

13 Q. Did you tell the FBI back on October 24,
14 2017, that Efrain Martinez wanted that inmate
15 stabbed?

16 A. No. Myself and Efrain wanted him stabbed.

17 Q. So you admit that you wanted the guy
18 stabbed and Efrain Martinez wanted him stabbed?

19 A. Exactly.

20 Q. And that was because he had gone into
21 protective custody at another prison?

22 A. That's because Daniel Sanchez told us he
23 did.

24 Q. Let me go back for a second. Daniel
25 Sanchez actually told you, "Don't stab him," didn't

1 he?

2 A. No, he did not.

3 Q. Did you tell the FBI on October 24, 2017,
4 that Daniel Sanchez told you, told everyone, not to
5 do anything to the guy?

6 A. We didn't have our weapons that day.

7 Q. That's not --

8 MS. JACKS: I move to strike the answer,
9 Your Honor.

10 THE COURT: It's nonresponsive, so I'll
11 strike the answer.

12 MS. JACKS: Will the Court instruct the
13 witness to answer the question?

14 THE COURT: Answer her questions. And the
15 Government, if it wants to bring out further
16 information, can do that.

17 THE WITNESS: Okay. I keep forgetting
18 that the Government is going to talk to me after
19 you.

20 Go ahead.

21 THE COURT: Ms. Jacks.

22 BY MS. JACKS:

23 Q. There is a question pending that hasn't
24 been answered.

25 A. Go ahead and ask it again.

1 Q. Do you want me to ask it again?

2 A. Yes, ma'am, please.

3 Q. Did you tell the FBI that Mr. Sanchez told
4 everyone not to do anything?

5 A. Yes.

6 Q. And when that happened, did that make
7 Sanchez look weak in your eyes?

8 A. Yes.

9 Q. And did you also believe it made him look
10 weak in the eyes of other people who were identified
11 as SNM Gang members in that pod?

12 A. Yes. They came to me after.

13 Q. They actually came to you?

14 A. They came to me, complaining about him.

15 Q. And given what I think you've told us,
16 that you're 100 percent down and dedicated or were
17 100 percent down and dedicated --

18 A. That's correct.

19 Q. -- to the SNM, that's a particular offense
20 to you?

21 A. That's why you're supposed to be the
22 carnal, and say, "Hey, let it go. Leave him alone.
23 Let it go. It's all good."

24 Q. And when Mr. Sanchez refused to do
25 something about that inmate that you and Efrain

1 Martinez wanted hit, what did you do?

2 A. We stopped in the dog run and told him he
3 had to leave, myself and Daniel Sanchez.

4 Q. Actually, you did it, didn't you?

5 A. I stopped and Daniel Sanchez stood next to
6 me, and we told him that he needs to leave.

7 Q. Did you tell the FBI on October 24, 2017,
8 that you took it upon yourself to threaten that
9 individual?

10 A. Exactly.

11 Q. And did you tell the FBI back on October
12 24, 2017, that when you took it upon yourself to
13 threaten that individual, he then asked for
14 protective custody again?

15 A. Yes, he left.

16 Q. I was trying to take notes yesterday when
17 you were testifying, and there was a lot you went
18 through in terms of the timing about what happened
19 on March 6 and 7, 2014. So what I thought we'd do
20 is go over it again. And I'm going to write it down
21 and make sure I get it right. Okay?

22 A. Okay.

23 Q. So I want to step through it piece by
24 piece. So let's just start with -- I'm going to put
25 the date March 6, 2014.

1 A. Okay.

2 Q. Okay? That's where I want to start. And
3 that's the date that Lupe Urquizo got to Southern
4 New Mexico Correctional Facility; right?

5 A. Right.

6 Q. Okay. So let's start there. And he's
7 actually walked into unit 1-A and is taken to yellow
8 pod; right?

9 A. That's correct.

10 Q. And if you -- if I recall your testimony
11 correctly, I think you said that you had some
12 communication with him right at that time as he was
13 escorted into yellow pod.

14 A. Yes. At the front door or the emergency
15 door?

16 Q. Well, let's do -- because there are two
17 times that you communicated with him; right? Or at
18 least two times that day.

19 A. We'll find out when you start asking me.

20 Q. So let's say when he arrives at unit 1-A.

21 A. Okay.

22 Q. So that would be where you saw him through
23 the pod door of blue pod; right?

24 A. The front door, yes.

25 Q. The one that has a window?

1 A. Yes, ma'am.

2 Q. So we have Lupe Urquizo arriving at unit
3 1-A?

4 A. Correct.

5 Q. And approximately what time did that occur
6 on March 6?

7 A. I couldn't give you the exact time, but
8 approximately -- I want to say it would have to be
9 after 12:00.

10 Q. So after 12:00 noon?

11 A. They were coming from Santa Fe on a
12 transport. They usually leave early. So it's
13 around three or four hours.

14 Q. So when do you have lunch?

15 A. Lunch is about 11:30.

16 Q. So it was sometime after lunch that you
17 saw him outside the pod door of blue pod?

18 A. It had to be after 12:00 because we go in
19 for 11:00 count.

20 Q. Is it okay if I put after 12:00 noon?

21 A. Yes.

22 Q. That works?

23 A. That will work.

24 Q. Okay. So then there was -- I think you
25 testified the next communication, or the next time

1 you had some sort of interaction with him, was at
2 the emergency door between blue pod and yellow pod.

3 A. That's correct.

4 Q. And if I got you right, you said that you
5 actually knew he was coming, and you had a note
6 ready and you slid it under the door.

7 A. That's correct.

8 Q. So that's the next thing I want to talk
9 about. I'm going to use "MR" for you and "LU" for
10 him, so I don't have to write it out every time.

11 A. Okay.

12 Q. So Mario Rodriguez slides the first note
13 under the door to Lupe Urquizo?

14 A. That's correct.

15 Q. Okay. About what time was that?

16 A. It was right after he came to the pod.

17 Q. So --

18 A. The front door, seconds.

19 Q. Within minutes of the first interaction?
20 So can we say somewhere between 12:00 and 12:15,
21 something like that, or 15 minutes after he comes
22 in?

23 A. No, not 15 minutes. Almost instantly
24 after.

25 Q. Two minutes?

1 A. Seconds.

2 Q. Immediately?

3 A. Seconds, because you're going to
4 orientation. They're going to lock you down.

5 Q. Let's do this. I'll label the first one
6 1. Okay?

7 A. Okay.

8 Q. And the second one 2, and we'll say number
9 2 happened seconds after one; right?

10 A. Yes.

11 Q. We're in agreement?

12 A. Yes, ma'am.

13 Q. And then I think you said that Mr. Urquizo
14 at some point later that day managed to have
15 somebody else slide a note back to you?

16 A. That's correct.

17 Q. And the person that you say slid the note
18 back was who?

19 A. I think it was Carlos Herrera.

20 Q. You think? Do you know? I mean, I don't
21 want you to guess if you don't know.

22 A. I'm pretty sure it was Carlos.

23 Q. Maybe what we should do is say that Lupe
24 slid a note back to you through some third party?

25 A. Yes.

1 Q. Because he was locked down; right? He was
2 in orientation?

3 A. Yes, ma'am.

4 Q. So number 3. So I wrote there Lupe
5 Urquizo passes a note to Mario Rodriguez by a third
6 party. I'm going to put "under the door" because
7 that's under the same door that you passed number 2;
8 right?

9 A. Where everything goes through, yes.

10 Q. When did that happen, according to you?

11 A. It had to be sometime during the same day
12 that he arrived.

13 Q. There were some other things that you
14 talked about. I think you talked about a visit to
15 the yard somewhere around -- a visit to the yard
16 that you didn't go to, but other people went to
17 sometime around 3:00 p.m.?

18 A. That was the next day.

19 Q. The visit to the yard was the next day?

20 A. Yes, ma'am.

21 Q. Okay. So I'm trying to think what -- is
22 there a count at 4:00 every day?

23 A. Every day.

24 Q. And is there dinner at some point?

25 A. Dinner is right when the count opens. I

1 think it's 4:00. So we eat in our cells.

2 Q. Is this note, this number 3, the note that
3 Lupe Urquizo passed to you -- is that before or
4 after dinner, if you know?

5 A. Number 2 or 3?

6 Q. Number 3. That's the one we still don't
7 have a time on.

8 A. Oh, the circled numbers. That would have
9 to be before dinner. Yeah, before dinner.

10 Q. And so what happens is: You get locked
11 down for count at about 4:00 in the afternoon, and
12 then you get dinner while you're locked down?

13 A. I think so.

14 Q. So before 4:00 p.m.? Are we good with
15 that?

16 A. Yeah.

17 Q. All right. So I put before 4:00 p.m.;
18 before 4:00 p.m. count. Why don't we do that?

19 A. Okay.

20 Q. All right. And then if I recall your
21 testimony correctly, I think you said in response to
22 that note you were able to pass a second note to Mr.
23 Urquizo?

24 A. I responded to his note that he sent me.

25 Q. So I'm going to say, "Under the same

1 door"?

2 A. Under the same door, yes.

3 Q. And again, Mr. Urquizo at this point, at
4 least based on your knowledge of the prison system,
5 would have been locked in his cell?

6 A. Orientation.

7 Q. So did that also go through some sort of
8 third party?

9 A. That's correct.

10 Q. And when did -- when is it that you say
11 you passed that note back to Mr. Urquizo?

12 A. Once I was done responding to his letter,
13 once I read his letter, then I wrote it out. So
14 it's before.

15 Q. So was that also before the 4:00 p.m.
16 count?

17 A. Yes, ma'am.

18 Q. All right. So all this, all of this
19 happened before the 4:00 p.m. count?

20 A. I'm pretty sure it did, yes.

21 Q. And do you have any concept, in terms of
22 what you're telling us, the time between the note in
23 number 3 and the note in number 4? Was it 10
24 minutes? Two hours? What is your --

25 A. I didn't have my stopwatch at the time.

1 But as long as it takes you to read and respond, so
2 not very long.

3 Q. I'm leaving it up to you to tell us.

4 A. Not very long. I can't give you an exact
5 number.

6 Q. Can you give us an approximate time
7 period? I mean, was it under an hour? Over an
8 hour?

9 A. I don't think it takes that long to write.
10 So maybe 15, 20 minutes.

11 Q. Okay. So I'm going to put --

12 A. Under 15 minutes.

13 Q. I'm going to add to number 4 here, "Under
14 15 minutes from number 3." "Less than 15 minutes
15 from number 3." In other words, you responded --
16 according to what you're saying, you responded to
17 him in 15 minutes or less.

18 A. Right.

19 Q. Does that make sense? Did I get that
20 right?

21 A. I don't know if it's right, but it
22 sounds --

23 Q. What I'm trying to communicate -- if you
24 want me to write something else, I will. But you're
25 saying that less than 15 minutes after number 3, you

1 passed the note that we're calling note 4?

2 A. Yes.

3 Q. All right. Now, did anything else happen
4 in terms of you, in terms of what you're saying you
5 communicated with Mr. Urquizo on March 6?

6 A. I believe I spoke to Dan a couple times,
7 and -- in between these letters?

8 Q. I mean, you did other things. You went on
9 living your life; right?

10 A. In between these letters?

11 Q. I'm just asking anything of significance
12 with respect to what you're saying about -- let me
13 go back. No paperwork was passed, according to you,
14 right, that night?

15 A. Not at this time, no.

16 Q. And you didn't have any further
17 communication with Mr. Urquizo that night.

18 A. After that one, after I responded?

19 Q. Right.

20 A. No.

21 Q. And you didn't get any more notes,
22 according to you, from him that night.

23 A. I don't recall, no.

24 Q. Well, that's two different things, isn't
25 it? Either you don't recall, or you didn't?

1 A. I would recall if I did. I didn't.

2 Q. Okay. So no further notes from him?

3 A. No.

4 Q. So can we go to March 7? I'll leave a
5 little space in case we come up with something.

6 A. All right.

7 Q. And March 7, if my notes are good, I think
8 that you testified yesterday that you went to the
9 yard.

10 A. Yes.

11 Q. And if I'm remembering correctly, while
12 you were waiting to go out to yard is when you had
13 some sort of communication through the pod door of
14 yellow pod.

15 A. That's correct.

16 Q. And approximately what time was that?

17 A. I'm trying to remember back to when we
18 used to go to the gym. It has to be sometime in the
19 morning, before lunch.

20 Q. So I noted on this exhibit you went to the
21 yard. And on the way you talked through the yellow
22 pod main door.

23 A. That's correct.

24 Q. Okay. And it was sometime before lunch.

25 A. Sometime in the morning between -- I think

1 we go out for an hour, so it would be maybe 9:00.

2 9:00. 10:00.

3 Q. What time is lunch?

4 A. 11:00, 11:30.

5 Q. All right. So I mean, I don't want to --
6 you said you know it's before lunch; right?

7 A. Right.

8 Q. And when you said 9:00 or 10:00, you're
9 kind of guessing; right?

10 A. Yeah, I'm kind of guessing. Because I
11 don't remember the routine there.

12 Q. Is it okay if we just put "sometime before
13 lunch"?

14 A. Yes, ma'am.

15 Q. And lunch is at 11:00 or 11:30 a.m. Are
16 we in agreement about that?

17 A. Yes.

18 Q. All right. Then if I recall your
19 testimony, what you're saying is that you came back
20 from yard?

21 A. Yes.

22 Q. And sometime after you came back from
23 yard, according to you there was paperwork passed
24 under that same door we've been talking about.

25 A. That's correct.

1 Q. The door that adjoins the two pods?

2 A. That's correct.

3 Q. So is that -- did that happen after you
4 came back from yard?

5 A. I think it happened after count.

6 Q. Okay. And what time -- I mean, there is
7 counts many times a day; right?

8 A. Yeah. It's after the lunch count.

9 Q. Okay. And so when is the lunch count?

10 A. So it would have to be 11:00 to 12:00.

11 Q. From 11:00 to 12:00 is the lunch count?

12 A. Yes, ma'am.

13 Q. So everybody is locked in their cells at
14 that point?

15 A. Everybody except for the individuals on
16 orientation.

17 Q. They get to come out at that time?

18 A. They get a shower, and then they lock them
19 back down.

20 Q. And you're testifying about that -- that's
21 just sort of the regular routine that you remember?

22 A. Yes, ma'am.

23 Q. So why don't -- so the next thing is this
24 paperwork. What can we call that door between the
25 two pods? Is it an emergency door?

1 A. Emergency door. Emergency conjoining
2 door.

3 Q. All right. So you -- and you're actually
4 there to receive the paperwork when it's passed,
5 according to you.

6 A. I do.

7 Q. Were you with anybody?

8 A. At that time, no.

9 Q. Were you with Timothy Martinez?

10 A. Timothy was at work. No.

11 Q. So the stuff comes sliding under the door,
12 and you're the one that gets it, and you're there by
13 yourself.

14 A. I'm there by myself at that time, yes.

15 Q. And that's after the lunch count?

16 A. That's after the lunch count.

17 Q. And what time -- can we put a time on it,
18 or do we just want to say that sometime after the
19 lunch count, which generally ends at noon?

20 A. What are we putting a number on?

21 Q. On when you actually physically supposedly
22 take this paperwork?

23 A. Yes, sometime after the lunch count.

24 Q. Which ends at noon?

25 A. Right. It had to be before the phone

1 yard, so it's probably right after the 12:00 count.

2 Q. What time is phone yard?

3 A. Phone yard, I think, is -- because we go
4 into count again at 4:00. It has to be -- phone
5 yard is, like, maybe 2:30, 3:00 to 4:00, something
6 like that. It has to be. Because we go straight
7 from phone yard -- they alternate the schedules.
8 One day we go to phone yard, the next pod goes to
9 phone yard. So it's complicated when you want the
10 routine down. So it has to be 3:00 to 4:00 that
11 day.

12 Q. Let me see if I can flesh this out a bit
13 more before we add this to the chart.

14 A. Okay.

15 Q. I think what you said yesterday -- I might
16 be wrong; correct me, if I'm wrong. I think what
17 you said yesterday is that you actually did not go
18 to phone yard that day.

19 A. I did not.

20 Q. And the reason you did not go to phone
21 yard, based on your testimony, is that that was when
22 you were making shanks.

23 A. That's correct.

24 Q. So your recollection, based at least on
25 your testimony yesterday, was phone yard.

1 A. Yes, yes.

2 Q. What I'm going to do -- I'm going to skip
3 down -- we're going to put that on there. But
4 something happened. A couple things happened,
5 according to what you're telling us, between the
6 time you got the paperwork and the time people went
7 out for phone yard; right?

8 A. That's correct, yes.

9 Q. So one of the things you said was that the
10 paperwork was passed back.

11 A. I passed it back, yes.

12 Q. And another thing that you told us was
13 that you took a piece from Rudy Perez' walker?

14 A. That's correct.

15 Q. So which happened first? Did you pass the
16 paperwork back, or did you take a piece from the
17 walker?

18 A. The paperwork went back first.

19 Q. Okay. So let's put that on next.

20 A. Okay.

21 Q. Again, was that you that physically passed
22 the paperwork back?

23 A. Yes.

24 Q. And was anybody else involved in that?

25 A. Not the initial holding the paperwork.

1 But Dan Sanchez was with me at the time, yes.

2 Q. When you passed it back?

3 A. Yes.

4 Q. So I'm going to refer to him as DS. Okay?

5 A. Okay.

6 Q. Paperwork is passed back. You're actually
7 physically doing it, but you're saying that Dan
8 Sanchez was there?

9 A. That's correct.

10 Q. Can you give us a time on that?

11 A. What was the timing that we put -- hold
12 on. What was the time that we put that the
13 paperwork came through? After? 12:00.

14 Q. We put it came out after lunch --

15 A. Okay.

16 Q. -- which ends at noon?

17 A. So the paperwork -- probably read it very
18 quickly and instantly took it back. So it has to be
19 another 15 minutes.

20 Q. All right. So 15 minutes from the entry?

21 A. From when I received it to when I returned
22 it, 15 minutes or less.

23 Q. So I put, "About 15 minutes or less from
24 the above entry," meaning when you got it.

25 A. Correct.

1 Q. And then the next thing of significance
2 that you testified about yesterday was when you took
3 a piece from Mr. Perez' walker; right?

4 A. Yes.

5 Q. Because that was before phone yard. We're
6 going to get phone yard on here.

7 A. Before phone yard.

8 Q. Okay. I'm going to put that you, Mario
9 Rodriguez, physically took piece from walker and you
10 put it in your hamper; right? In your cell?

11 A. Yes.

12 Q. You did that immediately?

13 A. After taking it out of Rudy Perez' house,
14 yes, I put it in the hamper.

15 Q. Okay. So what time are we going to put
16 for that?

17 A. Maybe getting closer, around maybe 1:00.
18 Because there was a little bit going on in between
19 that. 3:00 and 4:00.

20 Q. I just want to look back. Because I think
21 that you testified yesterday that this event -- that
22 that event happened somewhere around 2:00 or 2:30.
23 And I guess I just want to draw your attention to
24 that before we assign a time to this, if you're
25 reevaluating after thinking about it closer.

1 A. No, I'm not reevaluating it. I'm thinking
2 about what happened in between 3:00 and 4:00, and
3 how long it took for that to take place.

4 Q. Right.

5 A. So I'm trying to -- once it gets to 2:30,
6 everything will become tightened up.

7 Q. How would it help if we just started and
8 put the phone yard on there at 2:30? Or when is
9 phone yard?

10 A. See, when the wheelchair program comes
11 back, the phone yard comes in, and we instantly go
12 to lockdown.

13 Q. So it's timed so that when people get back
14 from working at the wheelchair program, the people
15 that weren't working are coming in from phone yard?

16 A. Like maybe 10 to 15 minutes to get your
17 shit together, and then go to lockdown so --

18 Q. And that's a 4:00 p.m. lockdown?

19 A. Yes. So you go to phone yard, you want to
20 leave something, an hour, hour and a half, so you
21 go -- I'm saying --

22 Q. You've got to be back around at least
23 3:45?

24 A. Exactly, exactly.

25 Q. So that would mean you would go to phone

1 yard no later than 2:15, 2:30?

2 A. Around that time, yes.

3 Q. Let's go ahead and put that in. Okay?

4 A. Okay.

5 Q. I'm going to the second page. And we're
6 continuing -- this is March 7; right?

7 A. Yes.

8 Q. All right. So we have phone yard. And
9 that is 2:15, 2:30?

10 A. Around, yes. Around that.

11 Q. And that's when you think that people are
12 let out to phone yard, and then they come back about
13 an hour and a half later?

14 A. I was thinking -- no, because we go to
15 count at 4:00. I think when I took the weapon was
16 around 2:30, something like that. So you go into
17 count at 4:00 so you have to go out for an hour to
18 the phone yard, which is somewhere around 2:45;
19 right?

20 Q. Okay.

21 A. 2:45 -- I'm not good at the math. But
22 2:45, then you come back in about 3:45.

23 Q. So let's change this phone yard and make
24 it 2:45; right?

25 A. That's correct.

1 Q. And then, now that we know, okay, that
2 phone yard was 2:45, I want to make one more
3 notation on that because you did not go to phone
4 yard that day.

5 A. I did not.

6 Q. So I'm going to put on there that you
7 stayed behind.

8 A. Stayed behind.

9 Q. And can we go back now and assign a time
10 to the one before that?

11 A. The weapon?

12 Q. Right.

13 A. I think it's going to get tightened up
14 right here.

15 Q. So if the phone yard was at 2:45, then
16 what time are we going to assign to when you
17 physically say that you took this piece from Mr.
18 Perez' walker and put it in the hamper?

19 A. Around 2:30; 2:25, 2:30.

20 Q. Sorry, I can't fit it all on one page.
21 All right. So it's during the phone yard time that
22 you're saying you're making these weapons in your
23 cell?

24 A. Prior to it and during it.

25 Q. Okay. So I'm just going to put that as a

1 notation.

2 A. Okay.

3 Q. That's your testimony, that before phone
4 yard and during phone yard you were making shanks.

5 A. In between 2:30 and 2:45, I was in the
6 process of breaking the shanks down, yes.

7 Q. Okay. So you started almost immediately
8 once you physically got it --

9 A. Yes.

10 Q. -- is what you're telling us?

11 A. Yes.

12 Q. All right. Now, the next significant
13 thing, I guess, is phone yard comes in, and then
14 there is the 4:00 p.m. lockdown?

15 A. Wheelchair program comes in maybe five
16 minutes before them.

17 Q. So wheelchair program comes in first, and
18 then phone yard?

19 A. About five to ten minutes before phone
20 yard.

21 Q. I made three entries because I think we
22 sort of talked about that. Wheelchair program comes
23 in, the phone yard comes in, and then there is count
24 where everybody is locked down, followed by dinner.

25 A. That's correct.

1 Q. Okay. So let's -- the wheelchair program
2 comes in, according to you, on March 7?

3 A. Around -- about 3:45.

4 Q. And that's significant, according to your
5 testimony, because that's when you say that you
6 talked to Timothy Martinez?

7 A. Correct.

8 Q. And that's when you say that you first
9 told Timothy Martinez that there is this plan to
10 kill Molina?

11 A. That's correct.

12 Q. And I'm going to add that under the
13 wheelchair program coming in, because -- did do you
14 that right when he came back?

15 A. Yes, I was in my room with the curtain up,
16 and I heard the front door open. I went to look at
17 the curtain. I seen the wheelchair program coming
18 back.

19 Q. Did you talk to Timothy Martinez
20 immediately?

21 A. I opened my door, I had the CO open my
22 door, and I went to speak to him immediately.

23 Q. So I added that Timothy Martinez speaks
24 with Mario Rodriguez.

25 A. Okay.

1 Q. And then the next thing is the phone yard
2 comes in?

3 A. Yes.

4 Q. And that's what time?

5 A. Maybe like five minutes after.

6 Q. 3:50, something like that?

7 A. They give you about a 10-minute window to
8 take a shower or whatever you want to do before you
9 go into the 4:00 count.

10 Q. So would you be comfortable if I put
11 approximately 3:50 in the afternoon?

12 A. Well, you're not going to get that exact
13 number, but around that time, yes.

14 Q. About 3:50?

15 A. Right.

16 Q. And then lockdown for count, followed by
17 dinner in your cell?

18 A. Right.

19 Q. What time is the lockdown for count?

20 A. I'm trying to remember. It's 4:00. I'm
21 trying to remember if they serve us our trays or at
22 5:00 we got our trays when we come out. I don't
23 remember.

24 Q. Well, I'll just put "dinner maybe in cell,
25 maybe not."

1 A. Right. I think the setting we were in,
2 the COs didn't like passing out the trays. So it
3 might have happened when we came out.

4 Q. I just put "may or may not be in cell"
5 because we're talking about what you're saying.

6 A. Okay.

7 Q. All right. And then it was -- I have a
8 couple things I want to add. So it was -- after the
9 count, were you unlocked and was everybody released
10 out of their cell?

11 A. At 5:00, yes.

12 Q. So 5:00 p.m. cell doors open for everyone?

13 A. Right. Right.

14 Q. So let's add that. And was it after --
15 I'll put the time over here, too, just because
16 that's how we're doing it. So it was after that,
17 after the cell doors open for everybody, that you
18 first talked -- that you're saying you first talked
19 to Jerry Montoya?

20 A. No.

21 Q. Oh, okay. Correct me, then. When did you
22 first talk to Jerry Montoya about needing to
23 participate?

24 A. After I went upstairs and spoke to
25 Timothy, came back down and gave the weapon to

1 Daniel and Jerry Armenta, and then I went and spoke
2 to Jerry Montoya.

3 Q. So that was before the 4:00 p.m. lockdown?

4 A. After.

5 Q. After. Okay.

6 A. Yes, I had spoken to Timothy again.

7 Q. Wait, because I think that's what I was
8 saying. Maybe we just miscommunicated.

9 A. What I'm getting at is, I'm trying to go
10 who I spoke to first, but you're saying who you
11 spoke to after count. Yes, I spoke to him after
12 count.

13 Q. Why don't we do it that way, then. Doors
14 open at 5:00 p.m. and now everybody is free to move
15 around?

16 A. That's correct.

17 Q. And who are you saying that you spoke with
18 first?

19 A. Timothy Martinez.

20 Q. After count.

21 A. Right. I went to speak to him again.

22 Q. So I put MR, Mario Rodriguez, talks to --
23 and let's just get the order. Timothy Martinez.

24 A. Right.

25 Q. Jerry Montoya?

1 A. Jerry Armenta and Daniel Sanchez.

2 Q. And then?

3 A. Jerry Montoya.

4 Q. In that order?

5 A. Yes.

6 Q. So can I just number that?

7 A. Oh, yes.

8 Q. Because that all happened within a very
9 short period of time.

10 A. Very quickly, yes.

11 Q. Then I think -- do you know the exact time
12 that the assault on Mr. Molina started?

13 A. After the nurse left, you know, I think
14 that's when they were in yellow pod, so it had to be
15 around 5:18, 5:20, somewhere around there, when it
16 went into motions.

17 Q. You're being really specific about it, and
18 I want to talk to you a second about how you know
19 that. You've been asked a lot of questions about
20 viewing the discovery in your state case and in this
21 case; right?

22 A. Right.

23 Q. You were charged shortly after the Molina
24 homicide in some crimes related to that; right?

25 A. That's correct.

1 Q. When were you charged? Do you remember?
2 Was it March 2014?

3 A. Yes.

4 Q. So it was within the month you were
5 charged; right?

6 A. I don't know. I really don't know. It
7 was in March, though. I believe -- that sounds
8 correct.

9 Q. And since then, you've had access to
10 materials that relate to the prosecution of the
11 case?

12 A. That's correct.

13 Q. And so part of those materials -- do those
14 include the video of the assault on Mr. Molina?

15 A. That's correct.

16 Q. And you've watched that, I would assume,
17 hundreds of times?

18 A. No.

19 Q. Tens of times, scores of times?

20 A. Maybe like maybe three or four times.

21 Q. Just only three or four?

22 A. I don't need to watch it. I was there.

23 Q. And there is a time stamp on that video;
24 right?

25 A. I think it has military time?

1 Q. I think it does.

2 A. Right.

3 Q. And so when you were -- when you're saying
4 the assault started around 5:18 --

5 A. Right.

6 Q. -- p.m., is that what you're relying on to
7 give us that specific time?

8 A. I thought this is what we were doing right
9 here. This is helping be more specific based on the
10 5:00, how long it took me to go talk to Timothy,
11 Jerry, and Jerry Montoya.

12 Q. Right.

13 A. So I think the purpose of this is to get
14 specific, and that's what I'm going off.

15 Q. Oh, it totally is.

16 A. Okay.

17 Q. But my point was that at 5:18, it's not
18 like you had a watch that you were timing when the
19 assault began.

20 A. Right.

21 Q. You know that time based on watching the
22 video.

23 A. Exactly.

24 Q. So I'm going to add that. Okay. So the
25 assault on Mr. Molina begins, and we're going to say

1 5:18 p.m.?

2 A. Is it? Is it actually?

3 Q. Well, that was your recollection.

4 A. Okay. Yeah.

5 Q. We could say about?

6 A. 5:18 or 5:20.

7 Q. I guess if we have the video, we can watch
8 that. It's when the video starts, or when you see
9 it on the video?

10 A. 5:18.

11 Q. We can see for ourselves, but your
12 recollection of watching that video is that it's
13 around 5:18; right?

14 A. Not just of watching the video, but that
15 helps, yes.

16 Q. Do you want to put "about"?

17 A. About 5:18, 5:20, I think the assault
18 takes motion.

19 Q. All right. All right. I think I'm done
20 with that chart.

21 So is there anything you want -- what I
22 want to do is, I want to mark this as Defendants'
23 exhibit next in order. It's a two-page exhibit. So
24 this is going to be marked Defendants' Exhibit EY,
25 and I guess I want to give you a minute to look over

1 it to make sure it's correct before I try to enter
2 it into evidence, because we can't make any changes
3 once we enter it. I'm going to bring it up to you.

4 A. I think I followed it on the monitor.

5 Q. All right. Do you want to take a minute
6 just to look it over?

7 A. I should, huh, since I didn't do the last
8 stuff, huh?

9 Q. Just let me know when you're done. Take
10 your time. I don't want to rush you.

11 A. That looks about right.

12 Q. All right. Is there anything you want to
13 change?

14 A. No.

15 Q. Okay.

16 MS. JACKS: So Your Honor, I would offer
17 Defendants' Exhibit EY into evidence at this time,
18 and I'll staple the two pages together.

19 THE COURT: Any objection, Ms. Armijo?

20 MS. ARMIJO: For demonstrative purposes,
21 we don't object. Obviously, this wasn't provided
22 earlier. As long as we can get a copy on the break.

23 MS. JACKS: Then I won't staple it. I'll
24 scan it at the break and give you a copy.

25 THE COURT: Is it all right for it to come

1 in for those purposes, Ms. Jacks?

2 MS. JACKS: That means the jury gets it,
3 right, when they deliberate?

4 THE COURT: Any problem with that?

5 MS. ARMIJO: No.

6 THE COURT: All right.

7 MS. JACKS: That's great. Thank you.

8 THE COURT: Anybody else have any
9 objections? All right. Defendants' Exhibit EY will
10 be admitted into evidence.

11 (Defendants' Exhibit EY admitted.)

12 BY MS. JACKS:

13 Q. All right. I'm going to move to another
14 area, but thank you for helping me do that.

15 Yesterday, you talked to us about the
16 notes, and we actually just -- we just sort of went
17 through that. But the notes that you say you passed
18 to Mr. Urquizo and that Mr. Urquizo -- the note that
19 he passed back to you on March 6 of 2014. Do you
20 recall that testimony?

21 A. Along the one that I responded to?

22 Q. Right, that we just went through.

23 A. Yes, two notes and one from him.

24 Q. Right. Just so that we're clear. So the
25 notes that we're talking about are the notes that

1 are referenced in number 2, 3, and 4.

2 A. Yes, ma'am.

3 Q. March 6, 2014. Those notes.

4 A. Yes, ma'am.

5 Q. Okay. The first time that you ever
6 mentioned passing notes like that was yesterday,
7 wasn't it?

8 A. I don't recall. I believe I mentioned it
9 before, but I don't recall.

10 Q. Okay. You've had six interviews with law
11 enforcement since you made the decision to become a
12 Government witness, haven't you?

13 A. If that's what's on record, yes.

14 Q. Well, let's go through it. I don't want
15 to be putting words in your mouth. Your first
16 interview with the Government was on October 24,
17 2017; right?

18 A. Yes.

19 Q. And you had -- and that was just the
20 prosecutors and your lawyer and you?

21 A. Right.

22 Q. And then on November 1st of 2017, you
23 actually sat down again with the prosecutors and
24 your lawyer, but this time the FBI was there?

25 A. Yes, ma'am. November 1st; right?

1 Q. Right. And then on November 16 of 2017,
2 you sat down with FBI Agent Acee and Ronald Sanchez
3 and some correctional officers from the Security
4 Threat Intelligence Unit at the Penitentiary of New
5 Mexico, didn't you?

6 A. That's correct.

7 Q. And that was a meeting that you're saying
8 was initiated by Ronald Sanchez?

9 A. Yes, ma'am.

10 Q. But that was a meeting and what was
11 discussed was sort of how Daniel Sanchez might be
12 convinced to either cooperate with the Government or
13 plead guilty; right?

14 A. Yes.

15 Q. And the benefit or the reason that you
16 participated in that meeting was, at least in part,
17 because of what the Government told you about what
18 benefit you might get if Mr. Sanchez cooperated or
19 pleaded guilty; right?

20 A. The initial one was Ronald Sanchez asked
21 me to speak to his brother for him. I told him
22 about the benefit. And I told him if Dan came over,
23 that I would let the Government know that I had no
24 interest in it. But, yes, there is a benefit.

25 Q. Well, I mean, that's not really responsive

1 to my question.

2 A. Okay. Go ahead.

3 Q. I am not going to move to strike the
4 answer, but I'm going to ask you to pay attention to
5 what I'm asking you.

6 A. Right.

7 Q. When you sat down at that meeting with
8 Ronald Sanchez and the Government, there was a
9 potential benefit for you in your mind, wasn't
10 there?

11 A. There is, yes.

12 Q. And specifically, the Government told you
13 that you will get more credit for your participation
14 as a Government witness if you can convince somebody
15 else to be a Government witness; right?

16 A. Not necessarily that.

17 Q. Well, that's one way you could get extra
18 credit; right?

19 A. I guess, yes.

20 Q. And another would be if you could convince
21 somebody else to plead guilty.

22 A. That's correct.

23 Q. So that would be beneficial to you.

24 A. Yes.

25 Q. And so that was, at least in part, your

1 motive for participating in that meeting.

2 A. No.

3 Q. That wasn't any part of it?

4 A. It was not any part of it.

5 Q. Now, do you know why it was that the FBI
6 or the Government was so interested in convincing
7 Mr. Sanchez to plead guilty?

8 A. I don't know if they were.

9 Q. Okay. Well, you'll admit that meeting was
10 over an hour?

11 A. Yes.

12 Q. And a lot of the discussion at that
13 meeting was how to motivate, shall I say, Mr.
14 Sanchez to plead guilty.

15 A. I think it was more or less Ronald trying
16 to figure out what he could bring back to his
17 brother and motivate him to leave, yes.

18 Q. I mean, part of the thing that was
19 discussed is perhaps arranging some way for Ronald
20 to do federal time, or get out of jail, get out of
21 jail at a set date; right?

22 A. Not get out jail. A recommendation for
23 parole.

24 Q. Okay. A recommendation for parole.

25 A. Yes, ma'am.

1 Q. And some sort of release, some sort of
2 negotiation with the State Department of Corrections
3 to agree to release Ronald to then do a determinant
4 federal sentence?

5 A. That wasn't the area. I don't know if
6 that's possible, but it was something that he was
7 interested in asking if it was possible. He was
8 looking for his options.

9 Q. And that was discussed.

10 A. Yes, ma'am.

11 Q. So that was the third meeting you had with
12 law enforcement?

13 A. Yes.

14 Q. And then you had a meeting on December 12,
15 2017, with law enforcement agents from the STIU
16 office at the Penitentiary of New Mexico?

17 A. And who else?

18 Q. Just them.

19 A. STIU?

20 Q. Yeah. December -- let me look at my notes
21 to make sure I'm right. December 12, 2017, with
22 Chris Cupit?

23 A. Oh, yes. He's not STIU.

24 Q. I'm sorry. He's a correctional officer,
25 though; right?

1 A. No.

2 Q. I'm sorry. What is Mr. Cupit?

3 A. I think he's an FBI task force officer.

4 Q. Okay. And STIU Captain Sergio Sapien?

5 A. Yes, he was there.

6 Q. So that's the fourth meeting you had with
7 law enforcement; do you agree?

8 A. Correct, yes.

9 Q. And then on January 22 of 2018, did you
10 sit down again with the U.S. Attorneys and FBI?

11 A. Where at? January 22?

12 Q. Yes, at the U.S. Attorney's Office in Las
13 Cruces, New Mexico.

14 A. That was here.

15 Q. January 22, 2018.

16 A. I think I might have, yes.

17 Q. Well, do you have some -- do you have
18 some --

19 A. I think that was the one I was in shock
20 over it. I thought I was coming to a pretrial to
21 testify, and I was in shock.

22 Q. You thought you were coming to testify,
23 and it was just a meeting?

24 A. There was a lot of anxiety, yes.

25 Q. So you agree with me that meeting

1 happened?

2 A. I remember that now, yes.

3 Q. And then you had another meeting with
4 Maria Armijo, the U.S. Attorney Maria Armijo and
5 somebody from the FBI on February 3?

6 A. That was on Saturday; right?

7 Q. Right.

8 A. I don't remember any FBI in there. I
9 remember Maria and just correctional officers.

10 Q. Okay. So that was the sixth meeting with
11 law enforcement.

12 A. Yes.

13 Q. I've been numbering them as we've been
14 going.

15 A. Yes.

16 Q. Okay. So did you say anything on October
17 24, 2017, about passing notes to Mr. Urquizo on
18 March 6, 2017?

19 A. January 22?

20 Q. Wait, I'm going to go through them in
21 order. Okay?

22 A. Okay.

23 Q. And the question is: Did you say anything
24 during any of these meetings, as I tick them off,
25 about passing notes to Mr. Urquizo on March 6, 2014?

1 Okay? Did you say anything on October 24, 2017?

2 A. I don't believe I did.

3 Q. Did you say anything on November 1st,
4 2017?

5 A. I don't know if I did. I don't believe
6 so.

7 Q. Did you say anything on November 16, 2017,
8 about that?

9 A. No. With Chris Cupit? No.

10 Q. Did you say anything about that on
11 December 12, 2017?

12 A. That was the one --

13 Q. That was the one actually I think with
14 Cupit and --

15 A. Oh, the first one was Ronald Sanchez.

16 Q. Right.

17 A. Okay. Yeah. No.

18 Q. So let's go back. November 16 was the one
19 with Ronald Sanchez. You didn't say anything during
20 that meeting about that?

21 A. No.

22 Q. December 12. That was the one with Chris
23 Cupit and Sapien. Did you say anything about
24 passing notes to Mr. Urquizo in that meeting?

25 A. No, ma'am.

1 Q. What about January 22? That was the
2 surprise meeting.

3 A. That was the one I forgot. I think it
4 came up in that one where someone was alleging that
5 I had called someone. And that's when I remember
6 passing the letter. I think I brought that up
7 there.

8 Q. You think you did?

9 A. Yes, ma'am. That was the one I couldn't
10 remember. That was the one I was in shock for, yes.

11 Q. Have you reviewed the report of that
12 meeting?

13 A. I have not.

14 Q. And what about February 3, 2017? Did you
15 discuss passing notes to Lupe Urquizo in that
16 meeting?

17 A. I do not remember.

18 Q. I think we covered this, so I want to kind
19 of go faster, this topic. You're saying that you
20 got the paperwork passed to you under that emergency
21 door. And I think you made it clear when we filled
22 out the timeline that that was passed directly to
23 you, and you were the only person at the door to
24 receive it.

25 A. I was the only one that received it.

1 Q. Okay. At the time that you say that
2 happened -- excuse me. Are you okay?

3 A. Sorry.

4 Q. Do you need water?

5 A. I drank some water too fast.

6 Q. At the time that that happened, where was
7 Timothy Martinez?

8 A. At work.

9 Q. So that would be at the wheelchair
10 program?

11 A. Yes, ma'am.

12 Q. And is the wheelchair program, the place
13 where somebody works in the wheelchair program -- is
14 that somewhere outside of unit 1-A?

15 A. Yes.

16 Q. So he wasn't even in the unit.

17 A. No, ma'am. That was when the paperwork
18 was passed; right?

19 Q. That's when you're saying the paperwork
20 was passed.

21 A. Yes, ma'am. He wasn't there.

22 Q. And if we can just be clear. The first
23 time that you're claiming you have said anything to
24 Mr. Martinez about paperwork is when he got back
25 from the wheelchair program that day.

1 A. I think, yeah, when I told him -- when I
2 told him it arrived? Yes, I told him it arrived.
3 Yes.

4 Q. And that was approximately, according to
5 our chart, Exhibit EY, page 2, that was about 3:45
6 in the afternoon on March 7.

7 A. Where are we at? Yeah, when he came back
8 from wheelchair program?

9 Q. Yes.

10 A. Yes, ma'am. I know he knew of the rumors
11 of it, but we never went into really that. This is
12 the first time --

13 Q. Mr. Rodriguez, there is no question
14 pending.

15 A. I was just explaining.

16 Q. Now, this paperwork that you say that was
17 passed. I just want you to tell us what you're
18 saying it looked like. Just in general, how many
19 pages was it? Was it a police report? Was it court
20 documents? Was it on a form? I mean, I know that's
21 a compound question. But give us your description.

22 A. What legal work looks like?

23 Q. Not just legal work in general. This
24 legal work you say you saw on March 7, 2014.

25 A. It came through under the door in a manila

1 envelope.

2 Q. Okay.

3 A. It was -- I know it was sealed, and torn
4 at the top. So it was kind of tattered.

5 Q. So it was like an envelope that had been
6 sent through the mail?

7 A. It looked like -- well, we get manila
8 envelopes and we tear them open and use them for
9 other things. Like say, if it says legal work,
10 we'll tear it up and put whatever else in there.

11 Q. Right. You reuse it.

12 A. Yes.

13 Q. So it was in that kind of envelope?

14 A. Envelope. And it came under the door.

15 Q. I'm interested in what was in the
16 envelope.

17 A. Yes, I'm going to get there. When I was
18 there with me and Sanchez when I opened it, it was
19 Lupe Urquizo's -- an appeal to one of his cases he
20 picked up in Clovis. And we were flipping through
21 the pages. And we came across a police report. I
22 believe it was from Jesse Sosa's case.

23 Q. So it was tucked inside of some paperwork,
24 according to you, tucked inside some paperwork of
25 Lupe's appeal?

1 A. His appeal was detached with a staple,
2 then it was slid in there, and the staple was
3 reattached to it, and folded over, as if it was one
4 document.

5 Q. Okay. And the document appeared to be a
6 police report?

7 A. Appeared to be a police report.

8 Q. And was it from what police agency?

9 A. The LCPD.

10 Q. So that would be Las Cruces Police
11 Department?

12 A. Yes.

13 Q. And was it on -- how many pages was it?

14 A. I just remember -- I don't remember
15 exactly how many pages. I just remember the main
16 page that was -- myself and Daniel read. So it had
17 to be maybe, like, three to four pages. It wasn't a
18 full, full police report.

19 Q. So it was around three or four pages. It
20 was a partial police report; is that fair?

21 A. If -- well, I can't say that, but --

22 Q. You said it wasn't a full police report.

23 A. It wasn't a full discovery. It was just
24 like an interviewing officer out of the discovery,
25 the report.

1 Q. And was it on white paper? Was it on some
2 sort of form? Was it on colored paper?

3 A. I think all legal work comes on white
4 paper, so it was on white paper.

5 Q. Okay. And was it a form? You know how
6 sometimes, like, you'll get a piece of paper and
7 there are sections to type things in on?

8 A. No, I do not.

9 Q. Haven't you seen police reports where
10 they'll have, like, a logo in one place and have
11 lines and the officers fill in --

12 A. No, it was not one of those.

13 Q. Okay. So what was it?

14 A. It was a basic interview.

15 Q. So just a plain white piece of paper with
16 typing on it?

17 A. Plain white piece of paper with a stamp on
18 the front, where you know it came from a courthouse
19 when they stamped it.

20 Q. Okay, wait. Now I'm confused. Because
21 you said it was a police report, and police reports
22 come from police stations.

23 A. Well, they have stamps on them, like time
24 stamps. When we get paperwork, we always look for
25 the time stamp. Like a J&S has a time stamp on it.

1 Q. Okay. So are you saying now that it's
2 court paperwork, or is it a police report that had a
3 time stamp on it?

4 A. It's a police report.

5 Q. I'm just confused.

6 A. Well, paperwork is paperwork to me. I
7 don't know what the difference of it is, you know,
8 so --

9 Q. You've seen a lot of police reports in
10 your life, haven't you?

11 A. That's why paperwork is paperwork.

12 Q. And you've seen a lot of court paperwork
13 in your life, haven't you?

14 A. That's correct.

15 Q. So you know the difference.

16 A. I think they're all the same.

17 THE COURT: Ms. Jacks, let me talk to the
18 jury just a second.

19 It's a little early to break for lunch,
20 but if you want to, we can go ahead and break for
21 lunch. If you'd like to take a break, 15 minutes,
22 then work through the lunch hour and kind of
23 schedule things like we did yesterday, we can do
24 that. How many prefer the schedule we had
25 yesterday? How many of you want to go to lunch now?

1 All right. Well, let's take a 15-minute
2 break, and we'll come back, and then we'll work till
3 about 1:30 and take our lunch break.

4 All rise.

5 (The jury left the courtroom.)

6 THE COURT: All right. We'll be in recess
7 for about 15 minutes.

8 (The Court stood in recess.)

9 THE COURT: Let's go on the record.
10 Anybody need anything while we're waiting for the
11 jury to be brought in? From the Government? Ms.
12 Armijo, Mr. Castellano?

13 MR. CASTELLANO: No, Your Honor.

14 THE COURT: Anything from any of the
15 defendants? Anything we need to discuss, help you
16 with?

17 All right. All rise.

18 (The jury entered the courtroom.)

19 THE COURT: Please be seated.

20 Mr. Rodriguez, I'll remind you that you're
21 still under oath.

22 THE WITNESS: Yes, sir.

23 THE COURT: Ms. Jacks, if you wish to
24 continue your examination of Mr. Rodriguez, you may
25 do so at this time.

1 BY MS. JACKS:

2 Q. Mr. Rodriguez, I tried to make a note.

3 When we were recessed, we were talking about the
4 paperwork --

5 A. Right.

6 Q. -- that you testified about yesterday.
7 And I think where we were was, we were trying to
8 determine whether -- what your perception or what
9 your testimony is about what that paperwork actually
10 was.

11 A. Right.

12 Q. And we were going back and forth a little
13 bit about whether it was a police or a court
14 document. So I don't want to belabor the issue, the
15 point, but I guess I want to hear what your
16 testimony is about that paperwork that you're saying
17 that you saw.

18 A. I never thought about it until now, when
19 you bring that up. It does make sense it was a
20 court document, a copy of the original copy.

21 Q. So you think now --

22 A. That makes sense to me.

23 Q. So you're sort of changing maybe what you
24 said before?

25 A. I never thought to describe it as exactly

1 what it was. I just knew it was paperwork.

2 Q. Nobody ever asked you to describe exactly
3 what it was?

4 A. Just what it said.

5 Q. All right. We're going to get to that in
6 a minute. But before -- now, before me asking you
7 these questions, nobody from law enforcement ever
8 asked you to describe what the paperwork looked
9 like?

10 A. Not to the full extent that you're saying,
11 putting the exact label on where it came from.
12 Because if it's postmarked -- I received paperwork
13 from courthouses, and they have, like, a time stamp
14 on it. I never disclosed that, never really went
15 into that. I just said it was paperwork.

16 Q. So now, based on the questions that I'm
17 asking you, your testimony is that, well, maybe it
18 wasn't a police report; maybe it was a court
19 document?

20 A. Oh, it's a police report. But it's --
21 maybe it's a copy of the original that was in the
22 archives in the county.

23 Q. So --

24 A. It's a police report.

25 Q. When you say it's a police report, was

1 there something about the format, or was there a
2 logo on the paperwork, or a title, or you know, a
3 phone number, contact information for Las Cruces PD
4 on it that made you think it was a police report?

5 A. It was a statement. It was a statement of
6 a police report.

7 Q. You mean, it was a statement of an
8 individual like would be in a police report?

9 A. Exactly.

10 Q. But physically, was it on paper or a form
11 that looked like an official police report?

12 A. Yes.

13 Q. Okay. And then you're also saying it
14 looks like something that was filed in court,
15 because of the time stamp.

16 A. A copy of it.

17 Q. And did you say something about that
18 according to you, this paperwork had Javier Molina's
19 name in bold?

20 A. It was in bold letters with an underline
21 on it.

22 Q. With an underline.

23 A. Right.

24 Q. And was that the only thing that was
25 bolded and underlined, according to you?

1 A. I don't remember if any other names were
2 bold like that, but that was just his statement.

3 Q. And were there any other colors besides
4 black and white on the documents you say you saw?

5 A. Not that I remember.

6 Q. Now, is it your testimony that you read
7 this?

8 A. Yes.

9 Q. And what is it -- or what did it say about
10 the crime that Molina had allegedly committed or was
11 being questioned about?

12 A. I think it was a robbery but -- it sounded
13 like a purse-snatching to me. But the charge was a
14 robbery.

15 Q. Have you previously characterized it as a
16 strong-armed robbery?

17 A. No. Strong-armed robbery?

18 Q. Yeah.

19 A. I don't know the difference.

20 Q. So the documents that you read, was Molina
21 allegedly -- or giving -- in the documents, did they
22 say that Molina was saying something about the
23 participation of somebody else?

24 A. Yes.

25 Q. In this robbery?

1 A. Right.

2 Q. And was it a statement, if you know or if
3 you remember -- based on what your testimony is, was
4 it a statement to a police officer? Was he making
5 these comments to a police officer?

6 A. It was a police report.

7 Q. Okay.

8 A. I think police reports are done by police
9 officers.

10 Q. So it was -- the document that you saw was
11 written by a police officer.

12 A. I didn't see no one write it, but you
13 know, it's a police report.

14 Q. It seemed like it was written by a police
15 officer?

16 A. Right.

17 Q. And Molina was making a statement to the
18 police?

19 A. That's correct.

20 Q. After the offense had been committed?

21 A. That's correct.

22 Q. And was it a statement, could you tell,
23 according to what your statement is, where the
24 statement was being made? In other words, was he
25 being questioned back at the police station, or was

1 he arrested running away from the scene of the
2 crime, or what?

3 A. I don't recall where it was, where he was
4 being questioned, no.

5 Q. You don't recall those details?

6 A. I recall some details of it, yes. Those
7 details I don't recall.

8 Q. What are the details that you're telling
9 us you recall?

10 A. That he was the driver of a vehicle, that
11 somebody got out of the backseat of the car, came
12 running back, and told him to go, go, go; that he
13 took off; that he handed -- I don't know if he
14 described it as a purse, but that he gave something
15 to the guy in the passenger seat, and the guy threw
16 it out of a window. I want to say the road, the
17 street, was Mesquite Road, or something. I don't
18 recall exactly what road it was. But I think it was
19 Mesquite Road.

20 Q. Was Molina, according to these documents
21 that you said you read -- was he supposedly saying
22 that somebody else had committed this
23 purse-snatching?

24 A. That's correct.

25 Q. And that somebody else threw the purse or

1 whatever out of the car window?

2 A. That's correct. He never disclosed who.
3 He just disclosed the actions of them. And I
4 believe they identified him by his car. So they
5 later went to investigate if he had the car, because
6 it had different license plates on it. I believe
7 that was on the other page.

8 Q. And you're saying this is all in the
9 several pages, the three or four pages that you're
10 saying you read?

11 A. That's correct.

12 Q. Now, I want to move on to a different
13 topic, and that's just on the topic of shanks.

14 A. Okay.

15 Q. Are shanks common in prison?

16 A. Yes, ma'am.

17 Q. Among all inmates, or only inmates that
18 are members of prison gangs?

19 A. Well, the only members that I've ever
20 lived around that carried shanks on in general is
21 gang members, yes.

22 Q. So among prison gang members, shanks are
23 commonly carried on a daily basis?

24 A. We don't really disclose who have them
25 because we're worried. But yes, they're supposed

1 to, yes.

2 Q. So on any given day there would be shanks
3 in unit 1-B, for example?

4 A. I'm pretty sure there's maybe -- in the
5 whole unit?

6 Q. Yeah.

7 A. Oh, yeah. Everyone has shanks, pretty
8 much. Yeah.

9 Q. Okay. So I misspoke. Because I said unit
10 1-B and that's confusing. It's Unit 1-A, B pod. On
11 any given day there would be shanks in Unit 1-A, B
12 pod?

13 A. I knew of three.

14 Q. That's what I'm going to get to next. But
15 in unit 1-A on any given day, there would be shanks
16 in every pod?

17 A. There would be at least four or six people
18 with shanks in a pod.

19 Q. And I think you told us yesterday that you
20 actually possessed a shank? I think you've been
21 shown the icepick shank that was in your shoe.

22 A. Yes, ma'am.

23 Q. And you possessed that on March 7 of 2014?

24 A. And prior.

25 Q. And prior?

1 A. Yes, ma'am. I bring that from the PNM
2 North facility in my shoe.

3 Q. You brought that back with you in December
4 of 2013?

5 A. I had it in Level 6, 5, and 4, yes.

6 Q. And was it always just secreted there in
7 your shoe?

8 A. When I was in Level 5, when I would come
9 out to tier time, there was rival gang members on
10 the top tier, and I would have it tucked. I would
11 roll my sock down and put it where the sock was
12 covering a little bit in the form of my foot. So
13 when I was strip-searched, they couldn't see it.
14 And I would have the handle on it and be prepared to
15 use it.

16 Q. So the bottom line is, when it's there in
17 your shoe, that's really for transporting it, not
18 using it; right?

19 A. Yes, ma'am.

20 Q. I'm sorry. We overlapped.

21 A. Exactly.

22 Q. But you physically possessed that shank
23 for some period of time, it sounds like.

24 A. Yes.

25 Q. And when you were leaving your cell,

1 sometimes you would ready yourself to be able to use
2 that shank if the need arose?

3 A. Not in this -- not in the Southern
4 facility, no.

5 Q. But you described to us, I guess, when you
6 were at the North; right --

7 A. South facility.

8 Q. -- South, that you actually did that, you
9 would ready yourself to have it, if the situation
10 presented itself?

11 A. Yes, ma'am.

12 Q. All right. So that's one of the shanks
13 you knew about on March 7 of 2014 --

14 A. That's correct.

15 Q. -- in B pod?

16 A. That's correct.

17 Q. And you told us a little bit about the
18 fact that Timothy Martinez had gotten a shank from
19 Javier Molina that day?

20 A. Yes.

21 Q. And that's the shank that you took on
22 March 8 up to PNM North?

23 A. It was in my possession from March 7, yes,
24 and forward.

25 Q. And when was it, if you know, that Timothy

1 Martinez got that shank from Javier Molina -- or
2 I'll ask that question.

3 A. I do not know. I did not ask.

4 Q. Okay. But Timothy Martinez told you that
5 that was Molina's shank.

6 A. Yes.

7 Q. So that's the second shank that you know
8 about in blue pod that day?

9 A. That's correct.

10 Q. Now, were you aware of a shank that was
11 hanging -- let me go back.

12 MS. JACKS: Your Honor, I have an example
13 that's been marked Defendants' K-18. May I approach
14 and show it to the witness?

15 THE COURT: You may.

16 BY MS. JACKS:

17 Q. Have you had a chance to look at it?

18 A. Yes.

19 Q. So Mr. Rodriguez, showing you what's been
20 marked as Defendants' Exhibit K-18, is that a
21 photograph of a shank?

22 A. Yes, it's a photograph of a shank.

23 Q. And my question is: Is that a shank that
24 you knew existed in blue pod on March 7, 2014?

25 A. No, ma'am.

1 Q. You talked a little bit about Timothy
2 Martinez and his work at the wheelchair program.

3 A. That's correct.

4 Q. Can you just briefly tell us what the
5 wheelchair program is?

6 A. I didn't work there. I don't know. I
7 don't really know.

8 Q. You must have some idea. If he told you
9 he worked there, you must have some idea about what
10 he was supposedly doing.

11 A. I think building wheelchairs for people in
12 third-world countries.

13 Q. Okay. Were individuals in blue pod
14 bringing back materials for shanks from the
15 wheelchair program?

16 A. Yes. Two individuals were.

17 Q. And who were those two individuals?

18 A. Dale Chavez and Jason Wright.

19 Q. And on March 7 of 2014, were there shanks
20 in blue pod that had originated -- or that the
21 materials had originated from the wheelchair
22 program?

23 A. Not that I'm aware of.

24 Q. You've been asked some questions about
25 your access to discovery. And I just want to be

1 clear about what you had and when you had it.

2 When you were charged in the state case,
3 shortly after the Molina homicide, did you get
4 access to various reports and statements related to
5 the investigation of that crime?

6 A. On the state level?

7 Q. Yes.

8 A. Yes, ma'am, I had the discovery.

9 Q. And was -- you had all the discovery that
10 was generated in that case?

11 A. Yes.

12 Q. In paper format?

13 A. Correct.

14 Q. And that included witness statements?

15 A. That's correct.

16 Q. And then when you were charged in this
17 case, did you get access to additional discovery
18 that was more than what you had in the state case?

19 A. In the Molina case?

20 Q. In the federal racketeering indictment.

21 A. Yes, but you said the Molina charge?

22 Q. Yes. Under Molina or the Sosoya charge?

23 A. Yeah, I never received Sosoya discovery.

24 I was never charged with that charge on the state
25 level.

1 Q. No, I'm talking about in the federal case
2 now.

3 A. Oh, yeah. I received -- yeah. I never
4 had seen no documents on the Sosoya case prior to
5 the VICAR. In the Molina case I think I got -- the
6 only thing that was new in there were 302s and
7 confidential material.

8 Q. Okay. Additional investigative things
9 that you were not provided while the state case was
10 being prosecuted?

11 A. Yes. Federal documents, yes.

12 Q. And then you also got access to other
13 materials related to other crimes, one of which
14 involved the Sosoya charge; right?

15 A. Yes, ma'am.

16 Q. And then a bunch other crimes that were
17 not involving you whatsoever?

18 A. No, they didn't involve me at all.

19 Q. But you had them?

20 A. I had them, yes.

21 Q. And you had access to them?

22 A. Unfortunately, yeah.

23 Q. And the federal discovery came to you on
24 what we've been calling a tablet?

25 A. Yes, ma'am.

1 Q. It's a computer?

2 A. It's a computer; it's a flat-screen
3 computer.

4 Q. And did it also include video and audio
5 clips?

6 A. Yes, ma'am.

7 Q. Did it also include phone calls?

8 A. It did.

9 Q. Photographs?

10 A. Photographs.

11 Q. All sorts of investigative documents?

12 A. It sure did.

13 Q. And that tablet is updated or has been
14 updated every so often so you get the newest
15 materials?

16 A. I think my tablet has been updated twice.

17 Q. And you still have it today.

18 A. I still have it today.

19 Q. Where you're housed or where you've been
20 housed during the pendency of your case up to today,
21 do you have access to your tablet in your cell?

22 A. Yes.

23 Q. And do you have access to your tablet 24
24 hours a day, seven days a week?

25 A. No.

1 Q. Can you just tell us briefly what
2 limitations are placed on your access?

3 A. There were restrictions when we first got
4 them. The restrictions were: We don't have them at
5 night time. They were only given to us at 9:00 and
6 they were taken from us at 10:00.

7 Q. Let me stop you. 9:00 a.m. and they were
8 taken at 10:00 p.m.?

9 A. Yes, ma'am.

10 Q. Okay. And then that changed?

11 A. That changed. The lawyers, I believe,
12 filed a motion for us to have it whenever we needed
13 it. Then the facility got a little bit more lax on
14 it, and we were able to charge them whenever we
15 wanted to. So we would have to go through the
16 tablet all day, then get it charged. So now we can
17 do it whenever we want to charge it. But we were
18 losing it four or six hours a day, due the officers
19 being too busy to bring it back to us.

20 Q. Okay. For the charging?

21 A. Right.

22 Q. And somehow that problem got worked out
23 and you basically have it whenever you want it;
24 right?

25 A. Now, if you have an outlet in your room,

1 you pretty much have it whenever you want it.

2 Q. Mr. Rodriguez, do you consider yourself an
3 intelligent and creative person?

4 A. I've been told that.

5 Q. You've been taking classes -- or you were
6 taking classes at a prison?

7 A. Where?

8 Q. For reentry?

9 A. In what year?

10 Q. Well, are you familiar with an instructor
11 by the name of Keith Johnson?

12 A. He's a good friend of mine.

13 Q. And who is Keith Johnson?

14 A. He was a teacher that was brought in for a
15 project by a teacher named Ms. Robero. And he was
16 teaching reentry with the violent crowd in the
17 North. And he was a climber -- a mountain climber,
18 I believe, a philosopher, and talked about life.

19 Q. Was he somebody that encouraged you to do
20 creative writing?

21 A. He's the first person to ever come to me
22 and tell me I was kind of good at something, yes.

23 Q. He said you were good at it; right?

24 A. Very good at it.

25 Q. In fact, I think you were his most

1 outstanding student.

2 A. Yes, that's what he says.

3 Q. And you wrote quite a bit of things for
4 his class, didn't you?

5 A. For a book I was writing, for his class,
6 for a pin project that was in relation to the
7 Arizona State University, for my personal
8 self-growth. And, yeah, we exchanged letters.

9 Q. Okay. Have you used your story-telling
10 skills in connection with your criminal cases?

11 A. I have.

12 Q. And specifically, I guess I want to direct
13 you to, did you use your story-telling skills in
14 connection with your state case involving yourself
15 and Jerry Armenta and Jerry Montoya?

16 A. The Molina case?

17 Q. Yes.

18 A. Never.

19 Q. You never --

20 A. Never.

21 Q. Did you -- let's go back to the time of
22 this state case.

23 A. Okay.

24 Q. I want you to think carefully about this.
25 Would you agree with me that there was a time --

1 well, first of all, Jerry Armenta and Jerry Montoya
2 were charged with the murder of Javier Molina;
3 correct?

4 A. That's correct.

5 Q. And were you guys housed together during
6 the pendency of that case, at least for some period
7 of time?

8 A. I was never housed with Armenta. I was
9 housed with Montoya on one occasion, yes, in the
10 state case.

11 Q. In the state case, yes.

12 A. Yes, ma'am.

13 Q. I'm going back to between March 7 of 2014
14 and the federal indictment in December of 2015.

15 A. Yes, ma'am. We were in 3-A, Q pod. I was
16 on the bottom tier. He was on the top tier.

17 Q. Are you aware of a letter that Jerry
18 Armenta wrote to Jerry Montoya's lawyer?

19 A. I wasn't in the loop directly in that, but
20 I heard about it.

21 Q. All right.

22 A. I didn't want nothing do with that going
23 on.

24 Q. I'm going to ask you a few questions about
25 that. I'm going to give you a chance to be heard.

1 So my question is -- I think you answered the
2 question. You're aware of the letter.

3 A. Right.

4 Q. And was the letter an effort by Jerry
5 Armenta to tell a story about the Molina homicide
6 that exonerated Jerry Montoya?

7 A. That's correct, from what I heard, yes. I
8 believe.

9 Q. So he wrote a letter to Montoya's lawyer
10 to help to try to get Montoya out of the charges?

11 A. That's correct.

12 Q. And as a result of that letter, did Jerry
13 Montoya's lawyer file a motion in court to designate
14 Jerry Armenta his witness?

15 A. I think I was in court that day and I
16 think there were doing something like that.

17 Q. And that brings me back -- even if you
18 weren't housed together, you guys were able to
19 interact when you had court appearances together;
20 right?

21 A. They had me away from Armenta. He was
22 on -- they didn't want him near me. But Montoya, I
23 had interacted with Montoya.

24 Q. Are you aware -- I'm talking about the
25 letter now that Jerry Armenta wrote to Jerry

1 Montoya's lawyer. Did Jerry Armenta write that
2 letter and swear under oath that it was the truth?

3 MS. ARMIJO: Objection, foundation.

4 THE COURT: Ask if he knows these
5 questions before we ask him to answer them.

6 BY MS. JACKS:

7 Q. I'm asking you if you know.

8 A. Not directly.

9 THE COURT: Just a yes, no, answer on
10 that.

11 A. Can I have a question about something?

12 Q. Sure.

13 A. If I was told by another person about it,
14 it's a no?

15 THE COURT: No.

16 A. That's a no.

17 Q. Let's go one step further. Did the letter
18 become part of the discovery in either the state
19 case or this case?

20 A. Not that I received.

21 Q. So your testimony is that you've never
22 seen it?

23 A. In the VICAR case I seen a letter, but --
24 let me see. I seen a letter that he sent through
25 interprison mail to him. I never seen the letter

1 that they --

2 Q. The letter to the lawyer?

3 A. I never seen that.

4 Q. Okay. As a result of the letter, did
5 Jerry Armenta sit down for a deposition with the DA
6 and Jerry Montoya's lawyer?

7 A. I don't know.

8 MS. ARMIJO: Objection, foundation.

9 THE COURT: Well, ask if he knows the
10 answer.

11 BY MS. JACKS:

12 Q. Do you know whether he did?

13 A. Who sat down with who?

14 Q. That Jerry Armenta sat down for a
15 deposition with the district attorney and Jerry
16 Montoya's lawyer.

17 A. What is a deposition?

18 Q. Oh, I'm sorry. When they ask him
19 questions about the offense; what his testimony is
20 going to be.

21 A. Is that working with the --

22 Q. I'll direct your attention to a specific
23 date.

24 A. Okay.

25 Q. Are you aware of a recorded deposition

1 between Jerry Armenta -- well, where Jerry Armenta
2 was being asked questions, in which Jerry Montoya's
3 lawyer and the district attorney participated?

4 A. No.

5 Q. Okay. Was that provided to you either as
6 part of discovery in the federal case, the state
7 case, or investigative materials from your lawyer?

8 A. There is a video, but it's of him
9 cooperating with the STIU and the Government. I
10 don't think Jerry Montoya's lawyer was present for
11 that. That's the only video I've ever seen.

12 Q. Okay. In terms of this letter that Jerry
13 Armenta wrote to Jerry Montoya's lawyer, did you
14 have any part whatsoever in helping Armenta come up
15 with the story to exonerate Montoya?

16 A. No.

17 Q. And you laughed; right? You're saying
18 that's an absurd proposition?

19 A. I had no contact with Armenta at that
20 time.

21 Q. Well, you've never seen the letter, so you
22 don't know the date of it; right?

23 A. I don't know the date of it.

24 Q. So you wouldn't know whether you had
25 contact with him at the time or not?

1 A. I do know.

2 Q. How are you saying you know?

3 A. Because I got his -- when I got my
4 discovery, I seen that he had charges contributing
5 to the delinquency of a minor. I had my people look
6 them up, and they were charges that I didn't agree
7 with, and I discontinued all communication with him,
8 as well as the statement he made in the discovery to
9 the state case that he was by the door when Javier
10 Molina was beat up. And I took that as he was
11 snitching, and I didn't want nothing to do with him.

12 Q. So at some point -- at first, you and
13 Armenta and Montoya were fighting or presenting a
14 unified defense in state court.

15 A. No.

16 Q. You never were?

17 A. I was never a part of that. There was
18 three people involved, but I wasn't the third one.

19 Q. At some point you're saying that you cut
20 off any sort of relationship with Jerry Montoya?

21 A. Yes, ma'am.

22 Q. Because he had a sex offense in his past?

23 A. Not just because of that, but -- I found
24 that out later.

25 Q. And is there a date or is there some event

1 that we can tie that to?

2 A. I think it would be around the time. See,
3 I was isolated from the SNM for a long time. When
4 they moved me back, they didn't move me back with
5 the SNM. They moved Jerry Montoya, Timothy Martinez
6 and Armenta from Southern to the PNM North facility.
7 Armenta was put in R pod. Timothy Martinez and
8 Jerry Montoya were put in Q pod. At that time they
9 were isolating the pods. We couldn't go to yard
10 together. We had to go to single --

11 Q. Let me just stop you. If you looked at
12 your physical location history, could that help you
13 tell me the date that you cut off relationship with
14 Mr. Montoya?

15 A. No. I'm telling you right now when they
16 moved him there, I had no communication with him.

17 Q. So my question is -- I don't need to know
18 the whole narrative. I'm just looking for a time
19 period.

20 A. When they moved him that day, you could
21 look at his location when he was transferred from
22 his departure and arrival date from Southern
23 Correctional Facility to PNM North facility, you'll
24 find the date.

25 Q. And that was the last time you're saying

1 you ever communicated with Montoya?

2 A. Yeah. With Montoya, he lived with me at
3 that point in time, yes.

4 Q. What about Armenta?

5 A. I never lived with him.

6 Q. But you communicated with him at times and
7 you saw him in court; right?

8 A. No.

9 Q. Is there a time that you cut off
10 communications with Armenta?

11 A. Around the time I received the discovery.

12 Q. In the state case?

13 A. State case.

14 Q. So if we've got the timeline right, you
15 were charged in the state case sometime in March of
16 2014?

17 A. Right.

18 Q. And so you would have received the
19 discovery within a few weeks of that?

20 A. No, we didn't receive it right away. It
21 took a little while.

22 Q. So a few months after March 2014 is when
23 you cut off your -- any communication with Armenta?

24 A. Not just for that reason. That time was
25 because I was isolated from all SNM members.

1 Q. Okay.

2 A. But yes.

3 Q. So would it be fair to say by June of
4 2014?

5 A. I think would it be fair to say that when
6 we were in Dona Ana County Detention Center, I think
7 that's when I received the full discovery and he was
8 there. And I walked by him after I read it, and I
9 didn't say nothing to him. And that was the last
10 time.

11 Q. Okay. So that would have been sometime in
12 the summer of 2014.

13 A. I do not know.

14 Q. And I don't have Dona Ana County detention
15 records right now.

16 A. Okay.

17 Q. We'll leave it at that.

18 A. You can find them. I'm sure you'll go
19 look for them.

20 Q. So I want to talk to you a little bit
21 about your testimony yesterday regarding your -- the
22 case that sent you to prison.

23 A. Right.

24 Q. And that's the case where you were accused
25 of criminal sexual penetration.

1 A. Two counts.

2 Q. And just to sort of orient ourselves, that
3 crime -- or those crimes occurred in the Grants
4 County jail?

5 A. Grant County Detention Center in Silver
6 City, New Mexico.

7 Q. Okay. Grant County Detention Center.

8 A. In the top tank.

9 Q. So that's a local detention center where
10 people that get arrested for state offenses in Grant
11 County go if they can't make bail?

12 A. Yes, ma'am.

13 Q. And so that would include people that have
14 done things like driving under the influence of
15 alcohol?

16 A. Correct.

17 Q. Domestic violence?

18 A. Any crime on the streets.

19 Q. Minor theft?

20 A. Yes, ma'am.

21 Q. All the way up to more violent crimes?

22 A. Yes, ma'am.

23 Q. And the individual that was assaulted in
24 that case -- was that individual a white male?

25 A. He was a white male, yes.

1 Q. And he was in the county jail -- he was in
2 the county jail pending some sort of criminal case?

3 A. I don't know.

4 Q. Okay. You don't know what kind of case he
5 was pending?

6 A. I don't know what he was pending, no.

7 Q. He was just a white guy that unfortunately
8 ended up in the Grant County jail?

9 A. That's correct.

10 Q. And was he selected -- I mean, I think
11 you've said in your testimony that ultimately you
12 tortured him; right?

13 A. Ultimately, yes.

14 Q. Okay. Was he selected as a target for
15 your torture because he was alone in the county jail
16 without anybody to back him up?

17 A. No.

18 Q. Why was he selected?

19 A. It was an incident where the top tank was
20 just a bunch of unruly youngsters who were causing a
21 lot of problems. And we didn't want him there. We
22 were going to make them leave.

23 Q. He didn't fit in with you guys.

24 A. He didn't fit in with the crowd there.

25 Q. So the idea was to work him over for

1 whatever money and commissary he had; right?

2 A. No, the idea was to make him leave. And
3 while a couple inmates were packing his stuff, they
4 found a receipt that he had money. Then that's when
5 he was kept in the top tank.

6 Q. So you were going to just make him leave,
7 but when you found out there was something you could
8 get out of him, the plan changed?

9 A. That's correct.

10 Q. And the plan became: Let's work him for
11 whatever we can get out of him.

12 A. Me and a couple other individuals, yes.

13 Q. And then let's really humiliate this guy
14 and then we'll get rid of him.

15 A. That wasn't the plan at first. It just
16 proceeded into that.

17 Q. Well, that's what happened; right?

18 A. That's what happened, yes, ma'am.

19 Q. And the torture of this young man happened
20 over a period of weeks, did it not?

21 A. I think it was a week and a half.

22 Q. And the crimes that you committed over
23 that week and a half, when they were ultimately
24 brought to the attention of law enforcement and the
25 prosecution, you were facing a potential sentence of

1 52 years in state prison, weren't you?

2 A. I think it was a total of 159 in the
3 original indictment, before they dropped counts.

4 Q. And then it became 52?

5 A. It became 59, along with the rest of the
6 cases I was facing. I think I had six other cases.

7 Q. Well, that actually reminds me of
8 something I meant to ask you about. You had picked
9 up two cases on the streets of Silver City; right?

10 A. I think it was. Yes, I did.

11 Q. You picked up -- I want to say it was a
12 residential burglary?

13 A. Yes, ma'am.

14 Q. And then you picked up an assault; you
15 stabbed some guy; right?

16 A. Aggravated battery with a deadly weapon.

17 Q. And did you bail out?

18 A. No, I was -- I went to Chihuahua, Mexico,
19 and then was coming across the border, and was
20 extradited from El Paso County to Silver City, and
21 never bonded out.

22 Q. So you first tried to flee.

23 A. Yes. I thought I was going to die, yes.
24 I attempted to flee.

25 Q. So you fled to Mexico to avoid whatever

1 consequences were going to come to you as a result
2 of your criminal activity.

3 A. That's correct.

4 Q. And you got caught?

5 A. I didn't know that he had notified law
6 enforcement. And I had a preliminary hearing on the
7 burglary and larceny. So I was coming back to go to
8 that, and he ended up making a statement, and there
9 was an NCIC nationwide warrant for my arrest.

10 Q. So you got caught?

11 A. I got caught, yes, ma'am.

12 Q. And then you got sent back to New Mexico
13 to face the consequences of those charges?

14 A. That's correct.

15 Q. And was there something you did at that
16 point that -- you were stuck in jail; right?

17 A. Right.

18 Q. Was there something you did at that point
19 to try to get out of the consequences of the
20 charges?

21 A. I was on a work detail with officers from
22 the Los Lunas Cert team and I fled. I walked away.

23 Q. From a work detail while you were pending
24 charges?

25 A. From a work detail pending charges on

1 aggravated battery and a burglary and larceny.

2 Q. And then did you get arrested from that?

3 A. I got arrested immediately after that.

4 Q. And did you end up back in the county
5 jail?

6 A. Something my lawyer told me was idiotic,
7 yes.

8 Q. Then did you come up with a new plan of
9 how to avoid the consequences of your charges?

10 A. After the Hardy case, yes. After the John
11 Hardy case, yes.

12 Q. And what was that?

13 A. To escape again.

14 Q. And how did you -- did you accomplish that
15 escape?

16 A. They caught me right away.

17 Q. But you tried?

18 A. Yes, ma'am.

19 Q. And where did you escape from that time?

20 A. From the hospital.

21 Q. How did you end up in the hospital from
22 the county jail?

23 A. I told the officers I swallowed a razor
24 blade. And I swallowed a little piece of metal that
25 was wrapped around the broom. So when they go to

1 the X-ray machine, they would see there was a piece
2 of metal and believe it was a razor.

3 Q. And they would also believe maybe you were
4 trying to injure yourself?

5 A. No. I told them I swallowed it
6 accidentally; I carried a razor blade in my mouth
7 and I swallowed it accidentally. They housed me,
8 because they thought it was a razor blade. And
9 after taking a shower, the officer didn't put the
10 shackles on me right away. I looked around the
11 corner, seen the officer watching TV, and I ran out
12 of the hospital.

13 Q. But I missed the part where you swallowed
14 the metal and it showed up. And so did they move
15 you from the county jail to the hospital?

16 A. That's correct.

17 Q. To get rid of the metal somehow?

18 A. Correct.

19 Q. And then you took advantage of being in
20 the hospital, where there is lesser security, to try
21 to flee?

22 A. Yes.

23 Q. Again?

24 A. Yes, ma'am.

25 Q. And when you swallowed the metal and

1 presented this situation for the correctional
2 officers at the Grant County jail, did you do that
3 for the purpose of getting transferred to the
4 hospital?

5 A. Yes, ma'am.

6 Q. So you would have a better chance of
7 escape?

8 A. That was the plan.

9 Q. Now, you testified yesterday -- or you
10 acted like yesterday on the stand that you didn't
11 know that the crimes that you were convicted of
12 would require you to register as a sex offender. Do
13 you recall that testimony?

14 A. Right.

15 Q. All right. Was that the truth or a lie?

16 A. I think it's the truth in a way that
17 that's my mindset as it is.

18 Q. Well, you don't want to have to register
19 as a sex offender; right?

20 A. If I have to, if I'm going to become a
21 part of society again and society says that's one of
22 my obligations to do, then I'm going to have to do
23 it.

24 Q. The question is: You don't want to do it?

25 A. No. I'm not a sex offender.

1 Q. And you don't consider yourself a sex
2 offender?

3 A. Neither does the prison world.

4 Q. Let's take a minute and just talk about
5 that. Okay?

6 A. Okay.

7 Q. So the incident that you ended up as a
8 convicted sex offender for -- was this incident in
9 the Grants County jail?

10 A. Grant County jail.

11 Q. Grant, sorry; right?

12 A. Yes, ma'am.

13 Q. And the individual that was the victim of
14 these offenses was a person by the name of John
15 Hardy?

16 A. Yes, ma'am.

17 Q. Now, when you first started -- I think
18 using your word -- torturing Mr. Hardy, did you
19 start to whip him with a towel any time he wasn't
20 standing the way you wanted him to?

21 A. I believe I whipped him a couple of times,
22 yes, with a sheet.

23 Q. With a sheet, not a towel?

24 A. Yes, ma'am.

25 Q. Did you take a razor blade and put it to

1 his throat?

2 A. Yes, ma'am.

3 Q. Did you tell him if he told anybody at the
4 jail, that if he said anything, he would get hurt?

5 A. Yes. This was about -- this was before
6 the incident occurred.

7 Q. Right.

8 A. We were just telling him, if he told the
9 officers that we were extorting him for his money,
10 that I'd have him killed, yes.

11 Q. Did you tell him that if he was -- that he
12 wasn't to say anything about what was going on and
13 he wasn't to try to go to protective custody?

14 A. Yes. About the money, yes.

15 Q. And did you explain to the guards that
16 Mr. Hardy was your friend and everything was okay?

17 A. I don't think I explained that to them. I
18 just told them, "He's cool. Just leave him in that
19 room."

20 Q. So you attempted to -- if the guards were
21 at all concerned, you attempted to convince them
22 there was nothing be concerned about?

23 A. I didn't attempt. I did.

24 Q. And I think Mr. Villa asked you some
25 questions about this yesterday. What's a California

1 knockout?

2 A. It's when you put your hands on the neck,
3 cutting off the blood circulation to the brain, and
4 they go unconscious.

5 Q. And did you make Mr. Hardy do California
6 knockouts?

7 A. Yes, I participated in a couple of
8 California knockouts on him.

9 Q. Did you make him do it about 15 times
10 between 4:00 in the afternoon and 10:30 at night?

11 A. Not me exactly, but I was involved in a
12 few of those, yes.

13 Q. In some of the 15?

14 A. Yes.

15 Q. Not all of them?

16 A. Yes, ma'am.

17 Q. Did you make him drink a cup of urine?

18 A. No, but I was present when it happened.

19 Q. All this happened in a cell; right?

20 A. Yes. I was a part of the group that made
21 him drink urine, yes.

22 Q. Did you hand Mr. Hardy a piece of paper
23 that contained cleanser and make him inhale it
24 through his nose?

25 A. No.

1 Q. That's a lie?

2 A. Cleanser?

3 Q. Yeah, like Ajax or Comet.

4 A. A paper of cleanser?

5 Q. Yeah.

6 THE COURT: Let's not use the word "lie."

7 That will be for the jury to make that

8 determination. You can ask if it's accurate or

9 inaccurate, but let's leave that for the jury.

10 A. Yes, I made him snort Ajax. I didn't make
11 him sniff -- inhale it like a spray. He snorted
12 Ajax.

13 Q. And that was at your command?

14 A. Yes. One time, yes.

15 Q. And did you cause him to have to squirt
16 the contents of a hot sauce bottle into his rectum?

17 A. No.

18 Q. Did that happen?

19 A. I was told it happened. I was facing the
20 grill outside the cell when it took place. I think
21 it happened, yes.

22 Q. This was one cell; correct?

23 A. Yes, it happened.

24 Q. And that happened --

25 A. I didn't see it, but I know it happened.

1 Q. And it happened during the time period
2 that you told him if he told the guards anything
3 about what was going on in the cell, that he'd be
4 killed?

5 A. That's incorrect.

6 Q. It happened a different time?

7 A. Yes.

8 Q. Did you and others that were with you have
9 Mr. Hardy insert a lotion bottle into his rectum?

10 A. One of the inmates did, yes.

11 Q. While you were present in the cell?

12 A. Yes, I was present in the cell.

13 Q. And did you make him do that at least
14 twice?

15 A. No.

16 Q. Did somebody in the cell make him do it at
17 least twice?

18 A. No.

19 Q. That only happened once?

20 A. Only happened once.

21 Q. Did you participate with other inmates in
22 spreading toothpaste around his rectal area with a
23 spoon and making him eat it?

24 A. No.

25 Q. Did that happen?

1 A. I think it happened before I was present,
2 yes.

3 Q. So your testimony here under oath is that
4 you didn't see that happen, and that you did not
5 participate in it?

6 A. I was told, but I didn't participate in
7 it.

8 Q. Did you spit in his face?

9 A. I do not recall.

10 Q. Did you force him to give you information
11 on where he lived, and what kind of car he drove,
12 and what his children's names were?

13 A. His family information, yes.

14 Q. And did you tell him that if he said
15 anything to anybody, that you knew where he lived
16 and you'd be able to track him down?

17 A. I don't remember that. I told him if he
18 told anyone in PC, then I would send Raymond
19 Randolph to find him.

20 Q. And did you punch and kick him and hit him
21 in the head?

22 A. Throughout the time he was being
23 assaulted, or that day?

24 Q. Throughout the time. This was a week and
25 a half.

1 A. Yes, I assaulted him.

2 Q. This happened over the period of a week
3 and a half.

4 A. Yeah. I think in my habeas corpus, I
5 confessed to everything that I did to Mr. Hardy.
6 The habeas corpus that Mr. Villa has.

7 Q. Well, you filed -- once -- let's go back
8 for a second, okay? Because yesterday you testified
9 that you pled no contest to the case. Do you
10 remember that?

11 A. Yes.

12 Q. In fact, you pled guilty, didn't you?

13 A. No contest.

14 MS. JACKS: Your Honor, I have a certified
15 copy of a repeat offender and disposition agreement
16 in case number 424 CR-2006-00003. I'd ask that that
17 be marked defense next in order. I'm told that's
18 EZ.

19 THE COURT: Any objection, Ms. Armijo?

20 MS. ARMIJO: I haven't seen it.

21 MR. CASTELLANO: Can we approach, Your
22 Honor?

23 THE COURT: You may.

24 (The following proceedings were held at
25 the bench.)

1 MR. CASTELLANO: If this is what I think
2 it is, this is used for the purposes of habitual
3 offender enhancements. So if you admit, it means
4 you were convicted of a crime for purposes of the
5 New Mexico Habitual Offender Statute. What we need
6 to look at is the actual judgment itself to see what
7 the crime was.

8 MS. JACKS: I think the judgment was
9 entered -- marked and entered by Mr. Villa as an
10 exhibit.

11 MR. CASTELLANO: It's in the pen pack in
12 evidence, if we can look at that.

13 MS. JACKS: I'm not proposing to admit.
14 I'm just using it to refresh his recollection.

15 MR. CASTELLANO: This document won't
16 refresh his recollection. This is used for the
17 purpose of admitting that you have a conviction for
18 the offense -- the underlying offense is what -- the
19 action being looked at.

20 THE COURT: Well, if she wants to try to
21 refresh his memory with this, I'll allow it.
22 Doesn't look like it's coming in. And if you want
23 to try to do something later, you can do it on
24 redirect.

25 MR. CASTELLANO: I'm worried about leaving

1 a false impression with the jury. That's not the
2 purpose of this document.

3 MS. JACKS: It looks like -- let me take a
4 look.

5 THE COURT: She can refresh him with what
6 she wants. If it doesn't work, you can do it on
7 redirect.

8 MR. CASTELLANO: Give me a moment. While
9 we're up here, Your Honor, that's not the correct
10 document. That's all I'm saying. She's trying to
11 refresh or impeach with the wrong document.

12 THE COURT: I don't think she's impeaching
13 yet. She's just trying to refresh.

14 MS. JACKS: Is there another document that
15 I need?

16 MR. CASTELLANO: The correct document is
17 the plea paperwork with the judgment.

18 MR. JEWKES: This particular document,
19 Your Honor, outlines three counts in a criminal
20 information, and that the defendant shall admit one
21 prior felony conviction, second-degree kidnapping
22 with an indictment number for the kidnapping.

23 MR. CASTELLANO: I agree.

24 MR. JEWKES: And dispositions.

25 MR. CASTELLANO: I agree. If it's a no

1 contest plea or a guilty plea means a felony
2 conviction. But this is pursuant to the New Mexico
3 statute for enhancing sentences.

4 MS. JACKS: I have the plea agreement.

5 MR. CASTELLANO: That is the proper
6 document.

7 MS. JACKS: I'll take a look it.

8 (The following proceedings were held in
9 open court.)

10 THE COURT: All right. Ms. Jacks.

11 MS. JACKS: Your Honor, as I indicated at
12 the bench, I'm going to withdraw this and proceed
13 down a different line of questioning for the time
14 being.

15 THE COURT: All right.

16 BY MS. JACKS:

17 Q. So Mr. Rodriguez, in connection with your
18 conviction on this criminal sexual penetration case,
19 you decided, after you got to prison -- you started
20 having second thoughts about entering into the plea;
21 right?

22 A. Yes. In early 2008 I became aware of
23 learning more about the law.

24 Q. And in -- well, actually, it was before
25 that that you started having second thoughts, wasn't

1 it? Because you filed a series of petitions for
2 habeas corpus.

3 A. I think the beginning one was 2007, 2008.
4 The first one?

5 Q. Let's focus on the question, and then
6 we'll get to where we're going. Okay?

7 A. Okay.

8 Q. So did you file a series of petitions for
9 writs of habeas corpus?

10 A. Yes, ma'am.

11 Q. And that's a petition with the Court where
12 you're basically saying you're being held illegally
13 and you want to be released?

14 A. No, not released.

15 Q. You want to get a new trial?

16 A. I want my plea deal reversed.

17 Q. You want your plea deal reversed?

18 A. Right.

19 Q. And did you file a first petition for writ
20 of habeas corpus on August 10th, 2007?

21 A. If that's first one, yes.

22 Q. Okay.

23 MS. JACKS: Your Honor, I have a copy and
24 I'd like to mark that defense next in order. And
25 again, I'm proposing to show this to the witness;

1 not necessarily to admit it as evidence.

2 THE COURT: If you're withdrawing EZ, do
3 you want to use EZ?

4 MS. JACKS: Why don't I? I'll just move
5 the sticker over.

6 May I approach the witness?

7 THE COURT: You may.

8 BY MS. JACKS:

9 Q. Mr. Rodriguez, I'm going to leave this up
10 here with you, because I have another copy for
11 myself.

12 A. I know this is my first one.

13 Q. That's what I wanted to ask. So that is
14 your first petition for writ of habeas corpus?

15 A. Yes, ma'am.

16 Q. And you filed that with the Court on
17 August 10th, 2007?

18 A. Where is that?

19 Q. On the file stamp on the first page in the
20 upper right-hand corner.

21 A. Yes, 8/10/2007.

22 Q. At the time, you were an inmate in the New
23 Mexico Department of Corrections?

24 A. Yes, ma'am.

25 Q. And you were representing yourself?

1 A. Yes, ma'am.

2 Q. Now, was this -- in filing this, did you
3 have to attest to the truthfulness of this document?

4 A. I did.

5 Q. And it was under the same oath, an oath
6 similar to the oath that you took in court yesterday
7 and again today?

8 A. I don't know. I wasn't sworn in.

9 Q. But did you swear that the document was
10 true under penalty of perjury?

11 A. I believe I wrote that.

12 Q. I just want to direct you -- I want to
13 discuss a particular paragraph with you.

14 A. Okay.

15 Q. And on mine, that is what's labeled page 3
16 of this petition of habeas corpus, where you're
17 outlining the reasons that you're being -- that your
18 case should be overturned or reversed; right?

19 A. Yes.

20 Q. Or your plea deal should be overturned?

21 A. That's correct.

22 Q. And one of the things that you were
23 claiming was that you got ineffective assistance
24 from your lawyer.

25 A. That's correct.

1 Q. And that he should never have encouraged
2 you to plead guilty to the 18 years?

3 A. That he promised me promises, yes.

4 Q. And that he had made a promise to get you
5 married, which he failed to follow through with.

6 A. That's correct.

7 Q. Directing you specifically to page 3, the
8 part of the complaint that's labeled paragraph C,
9 did you also tell the Court that your conviction
10 should be vacated, because -- I'm just going to
11 quote from paragraph C?

12 A. Okay.

13 Q. -- "they also failed to inform petitioner
14 of all the consequences of a plea to a sexual
15 offense, as in having to register as a sexual
16 offender upon his release according to SORNA, Sexual
17 Offender Registration and Notification Act,
18 29-11A-7. Petitioner's attorney had an affirmative
19 duty to provide him specific advice regarding the
20 impact a no-contest plea would have on his life."

21 A. That's correct.

22 Q. That was part of your complaint?

23 A. That was part of my complaint.

24 Q. So as of the date that you filed this
25 petition for writ of habeas corpus, August 10th,

1 2007, you were aware that your conviction would
2 require you to register as a sex offender upon your
3 release from custody.

4 A. I wasn't completely aware, because my J&S
5 didn't say that, so I was kind of lost on that
6 aspect of it.

7 Q. You would agree with me that this petition
8 for habeas corpus, page 3, you're citing the fact
9 that you have to register as a reason your
10 conviction should be vacated.

11 A. Under SORNA, yes.

12 Q. And since this initial petition for writ
13 of habeas corpus, did you file an amended petition
14 for writ of habeas corpus through a lawyer in
15 September of 2007?

16 A. On this habeas?

17 Q. On this particular one, yes.

18 A. I believe there was one.

19 Q. And that was making the same sorts of
20 arguments to the Court?

21 A. That's correct.

22 Q. And finally -- I think you were asked
23 about this one yesterday -- on May 2 of 2013, did
24 you again, representing yourself, file yet a third
25 petition for writ of habeas corpus, making some of

1 the same complaints, trying to get rid of your
2 conviction for this registerable sex offense?

3 A. That's correct.

4 Q. So since 2007, so for a period of over 10
5 years, you've been trying to do whatever you can to
6 get rid of this conviction for this sex offense?

7 A. Not trying to get rid of it; get my case
8 overturned and admit to the crimes that I did
9 commit.

10 Q. And not have to register as a sex
11 offender.

12 A. That was part of it, yes.

13 Q. Would you agree with me that the fact that
14 you were convicted of these sex offenses is
15 something that has bothered you greatly ever since?

16 A. Well, yes.

17 Q. And we talked a little bit about your
18 creative writing. Does that sex offense figure into
19 some of your creative writing?

20 A. There is, I think, an essay I wrote on how
21 this life can lead you down a road like that when
22 you never expected it. And I think I wrote it to
23 probation officers.

24 Q. And some of your writing has been to try
25 to -- I guess I would characterize it as process

1 your feelings and some of your anger about being
2 convicted of this offense?

3 A. I was getting not just -- no. It was not
4 processed feelings. I know my feelings behind it.
5 It was outlining my life, and to further get to know
6 myself. I wrote for myself; and other people seemed
7 to like it, and I got into that aspect of it.

8 MS. JACKS: So, Your Honor, I have a
9 document entitled "An essay by Mario Rodriguez,
10 Inmate, Level 6." It has a Bates stamp of 51999.
11 And I'd like to mark this as next in order. And
12 again, this is for asking the witness questions.
13 I'm not proposing to admit it. I'm told that's FA.

14 THE COURT: All right. The document will
15 be so marked.

16 MS. JACKS: May I approach?

17 THE COURT: You may.

18 A. Can I keep this one, as well?

19 BY MS. JACKS:

20 Q. Yes, I'm going to take this one back. And
21 Mr. Rodriguez, I'm going to let you take a look at
22 that and just tell me -- take your time. Take a
23 look at it and tell me if you recognize that
24 document.

25 A. Yes.

1 Q. Is that something that you wrote?

2 A. Yes.

3 Q. And I just want to ask you -- I marked a
4 few places on this document so I don't have to keep
5 running up there to talk to you. But I want to ask
6 you a couple of questions about this document.

7 First of all, do you believe that your sex offense
8 crimes are normal?

9 A. In this world, yes.

10 Q. And do you believe that your sex offense
11 crimes never harmed an innocent person?

12 A. Being that it was incarcerated, and
13 incarcerated individuals that are in the lifestyle,
14 yes, it wasn't against an innocent individual.

15 Q. In this essay -- and I'm going to direct
16 your attention to the marked language at the top of
17 page 51999 -- can you tell me what you wrote with
18 that topic?

19 A. Do you want me to read it?

20 Q. Yes.

21 A. "I believe in my heart of hearts that all
22 my crimes are normal, because I've never harmed an
23 innocent person." Do you want me to continue?

24 Q. No. I think you've answered my question.
25 Do you believe that the crimes that you committed,

1 the sex offenses that you committed, were against
2 individuals who lived the same lifestyle as you, so
3 they aren't to be deemed innocent?

4 A. That was incarcerated with me, yes.

5 Q. And is that a topic that you wrote on in
6 this essay?

7 A. I haven't seen this essay in a very long
8 time, but --

9 Q. I would direct your attention to the
10 second marked language on page 51999.

11 A. Do you want me to read it?

12 Q. Yes.

13 A. "My crimes have been against individuals
14 who live the same lifestyle, so therefore, they
15 cannot be deemed innocent."

16 I don't think that's what I wrote there.
17 This is -- oh, yes, that's okay. I understand it
18 now.

19 Q. That is something that you wrote.

20 A. That's what I wrote. This is retyped by
21 my teacher.

22 Q. Right. Because he was impressed with your
23 work, and as a favor to you, he actually offered to
24 type it up; right?

25 A. No.

1 Q. He just did it on his own?

2 A. Yes. He's putting together a book of the
3 relationship he and I built over the time he spent
4 in the Penitentiary of New Mexico.

5 Q. Did you enter a plea deal in your criminal
6 sexual penetration case, not because you were
7 guilty, but because you thought your peers would
8 think you were crazy, and that prison would give you
9 a more solid and respected image?

10 A. Do you want me to read it?

11 Q. I want you to answer the question first.
12 Then I'll let you read it.

13 A. At that time, I was 18. I was straight
14 out of the juvie system. And I felt that the more
15 time you get, the more people look at you like
16 you're a crazy guy. You say, "Oh, I'm doing 30
17 years," people instantly respect that.

18 Q. So my question was --

19 A. Yes.

20 Q. My question was: Did you enter the plea
21 not because you were guilty or committed the crimes,
22 but to make your peers think you were crazy and to
23 improve your image of respect?

24 A. Correct.

25 Q. And did you write about that in this

1 essay?

2 A. Yes, you just read it.

3 Q. Will you read it? And for the record, let
4 me just put where you're reading from. This is that
5 same exhibit, at page 52001 in the first paragraph,
6 some highlighted text.

7 A. Are you ready?

8 Q. Yes.

9 A. You want me to do it from, "The next thing
10 you know," or --

11 Q. Yeah, I think so.

12 A. "The next thing you know, I'm spending 18
13 years in prison; not because I was guilty or that I
14 committed these crimes. I entered a plea because I
15 thought my peers would think I was crazy. And
16 prison made my image more solid and respected."

17 Q. I've got some other ones, and I want to
18 ask you about those just briefly.

19 A. Okay.

20 Q. I have another document. It starts at
21 Bates 52007. It's entitled, "Writings of Mario
22 Rodriguez," and there is a note on the top that they
23 were typed and composed by Keith Mark Johnson. And
24 I'd like that marked defense next in order.

25 THE COURT: Do you want to say that out

1 loud? What's the exhibit number?

2 MS. JACKS: F as in Frank, B as in boy.

3 May I approach the witness?

4 THE COURT: You may.

5 A. Do you want to keep this one? I haven't
6 seen this in a long time.

7 BY MS. JACKS:

8 Q. You can't keep it, unfortunately.

9 A. Can I get a copy of it?

10 Q. Yes. Showing you, Mr. Rodriguez, what's
11 been marked as FB, take your time and look through
12 that and see if that is, in fact, what it purports
13 to be, which are your writings typed up by your
14 teacher.

15 A. I haven't seen this, and I haven't
16 probably read it in years. So I don't know if it's
17 all my writing.

18 Q. But it's quite a few pages?

19 A. It's a lot of pages.

20 Q. Let me direct you to the two things I'm
21 going to ask you about, and see if you can just
22 direct your attention to those. So if you look at
23 page 52018, there is some highlighted -- there is a
24 highlighted portion at the top of the page that
25 starts with "So the lesson seemed to be."

1 A. Okay.

2 Q. Is that something that's from your
3 writings?

4 A. This is an excerpt out of "The Ax Maker's
5 Gift," by a writer named Wright. It's supposed to
6 be in his quotations.

7 Q. Okay. And is this something that you
8 wrote about, discussing it as part of your
9 philosophy?

10 A. No, this was something that I seen how
11 people acted toward other people, and it was
12 relating to the SNM, and how they're willing to
13 exploit you for whatever reason. And I added it
14 to -- you have to read the whole thing to get the
15 gist of it.

16 Q. I think based on your answers, I'm going
17 to move to the next portion I'm going to ask you
18 about. And that's at 52019. And it's the
19 highlighted language on that page. There is a
20 section at the top of the page and a section at the
21 bottom of the page.

22 A. Ready?

23 Q. Have you had a chance to read that?

24 A. Yeah.

25 Q. And do you recognize that as your writing,

1 not just copying somebody else's writing?

2 A. Yes, I believe this is my writing.

3 Q. And is this your writing commenting on
4 your feelings about your conviction for the criminal
5 sexual penetration case? And I'm talking about the
6 two highlighted portions, the one on the top and the
7 one on the bottom.

8 A. On page 52018?

9 Q. 52019, I'm sorry.

10 A. 52019? Which one do you want me to read
11 first?

12 Q. Take a look at both of them. And I'll
13 just ask you both of them at the same time.

14 A. Okay.

15 Q. So my question is: Are those -- do you
16 recognize that as things that you wrote?

17 A. Yes.

18 Q. And do you recognize that as things you
19 wrote about your criminal sexual penetration case?

20 A. That's correct.

21 Q. And so why don't you tell -- let's start
22 with the section at the top of the page. Can you
23 read that highlighted section?

24 A. I think --

25 Q. That starts with "For."

1 A. "For some reason I can't regret my choice,
2 no matter how harshly judged or shamed."

3 Q. And can you read the section at the
4 bottom?

5 A. "The old saying that joked about 'Don't
6 drop the soap' came through, and I stood involved."

7 Q. And finally, Mr. Rodriguez, I'm going to
8 ask you to turn to the very last page. That's
9 52022. And I think this is some writing that you
10 did about relationships, and I want to just ask if
11 you recognize that as your writing, and not somebody
12 else's?

13 A. The last page?

14 Q. It's the very last page. And I just
15 highlighted a portion that I want to ask you about.

16 A. Yes, this was about my son and my baby's
17 mother.

18 Q. And is it also about your -- is it
19 reflecting your views on relationships?

20 A. Yes, but not -- I get what you guys are
21 doing. It's in the aspect of the love I was wanting
22 from them. And do you want me to read it?

23 Q. Can you read what you wrote about the
24 relationship?

25 A. "I don't get anything out of the

1 relationship; therefore, I don't need it."

2 Q. That's all the questions I have about that
3 topic right now, Mr. Rodriguez.

4 So I want to talk to you a little bit
5 about what you're getting out of your relationship
6 with the Government as a Government witness. And I
7 think some other lawyers have asked you some
8 questions about this.

9 But let's start at the beginning. I think
10 you told us that your decision to become a
11 Government witness happened on October 24, 2017.

12 A. That's correct.

13 Q. And in order to get the help that you
14 needed -- I mean, at that point, you became -- you
15 wanted to become a witness and try to get some sort
16 of leniency for the criminal conduct that you were
17 accused of. Is that accurate?

18 A. That's part of cooperating, yes, ma'am.

19 Q. And at the time, this was, just as you
20 pointed out, just a few months ago, there weren't
21 too many -- let me go back a second. In order to
22 get credit for cooperating and for getting the
23 Government recommendation for a more lenient
24 sentence, you have to provide what's called
25 substantial assistance; right?

1 A. What is that?

2 Q. That's what is required for the Government
3 to file what's been referred to here in Court as a
4 5K1 motion?

5 A. Would it be --

6 Q. In other words, where they tell the judge
7 that "Here's how Mr. Rodriguez helped us with our
8 case, and so here's why he should get a more lenient
9 sentence."

10 A. Oh, okay.

11 Q. I'm sure you discussed that with your
12 lawyer.

13 A. No, I don't think we really got that far
14 into it.

15 Q. But you're aware that in order to receive
16 that sort of recommendation, you have to provide
17 substantial assistance?

18 A. I am now, yes, ma'am.

19 Q. And at the time, back in October 24, 2017,
20 there weren't too many people left to provide
21 substantial assistance for, were there?

22 A. As far as who?

23 Q. As far as people left as defendants in the
24 Molina homicide.

25 A. I don't think -- no, there wasn't.

1 Q. And so if you were going to provide
2 substantial assistance in October of 2017, that
3 assistance needed to be directed towards the
4 defendants in this case, didn't it?

5 A. No.

6 Q. You don't think so?

7 A. No.

8 Q. Let's talk about the benefits that you've
9 received.

10 A. Okay.

11 Q. Do you want to list them? Or why don't
12 you just take a shot at listing them, and then if I
13 think you got something, I'll let you know.

14 A. I got a 5K.

15 Q. You're expecting a 5K; right?

16 A. I don't know really how that works. I
17 just know I signed a 5K, a Kastigar letter.

18 Q. You signed a cooperation agreement, and
19 the Government has said that if you testify as a
20 witness and help their case during the trial,
21 they'll make a recommendation for a lesser sentence;
22 right? That's a benefit?

23 A. All right.

24 Q. Right?

25 A. Yeah.

1 Q. That's a benefit. So what besides that?

2 A. I got out of the gang life. I don't have
3 to be a gang member no more.

4 Q. Right.

5 A. My one opportunity to get completely out.
6 I think I got \$50 a month.

7 Q. So you got some money.

8 A. Yeah, if you call that money.

9 Q. It's more money than you got when you were
10 in prison.

11 A. Bullshit. My family take care of me.

12 Q. They can still take care of you, can't
13 they, Mr. Rodriguez?

14 A. And they still do.

15 Q. What about visits?

16 A. About visits, I got I think a threat
17 analysis visit.

18 Q. And you got family visitation; right?

19 A. I got to see my family.

20 Q. And you actually got to do that in a
21 contact setting, not separated by a Plexiglas
22 screen.

23 A. Yes, ma'am. That surely isn't the reason
24 why I left.

25 Q. I'm going to ask you the questions: You

1 got the agreement that whatever is remaining on your
2 state time can run concurrent with whatever federal
3 sentence you get for -- as a result of your
4 cooperation.

5 A. Not at first.

6 Q. But you got that.

7 A. Yes. After I seen the plea agreement, I
8 requested that my state time be run concurrent.

9 Q. So you bargained for that.

10 A. I'm on in-house parole. But I don't know
11 really how much time I've really got left in the
12 state.

13 Q. And have you been promised -- or has
14 anyone discussed with you any sort of cut in your
15 state time or the fact that your state time can be
16 terminated early?

17 A. No.

18 Q. As part of the benefits for becoming a
19 Government witness in this case, have you been
20 promised a new identity, a new identity that comes
21 with a new criminal record that's clean?

22 A. Not that I'm aware of.

23 Q. Have you discussed that with the
24 prosecution?

25 A. No, ma'am.

1 Q. Now, Mr. Rodriguez, on November 9th of
2 2017, prior to the meeting with the FBI and Ronald
3 Sanchez, did you write a letter to Daniel Sanchez?

4 A. I did.

5 MS. JACKS: And Your Honor, I have a copy
6 of that letter. I'd ask that it be marked defense
7 next in order. F as in Frank, C as in cat. And
8 that's Bates No. 51520.

9 May I approach the witness?

10 THE COURT: You may.

11 BY MS. JACKS:

12 Q. Mr. Rodriguez, I'm going to ask you to
13 take a look at that letter and see if that's the
14 letter you wrote to Mr. Sanchez on November 9 of
15 2017?

16 A. This is the letter I wrote to Daniel
17 Sanchez.

18 Q. And you wrote that letter before you had
19 the meeting with the FBI agent and Daniel's brother;
20 right?

21 A. Right.

22 Q. And you wrote it in part, I guess, to
23 explain your decision of why you became a Government
24 witness; right?

25 A. Yes.

1 Q. And I think the other reason or the other
2 part, the other thing you were trying to communicate
3 in this letter was that maybe Dan should follow you
4 and maybe he should become a Government witness?

5 A. Not follow me. I just wanted him to know
6 that there was choice out there he could make. I
7 didn't know there was a choice to be made.

8 Q. And at the time that you wrote this
9 letter, you had been told by the Government that if
10 you get Mr. Sanchez to become a Government witness
11 or plead guilty, that you would get a benefit for
12 that.

13 A. No.

14 Q. You had not been told that?

15 A. No.

16 Q. Did you tell Mr. Sanchez -- and I'll just
17 direct your attention to the very last part of the
18 letter where you put a PS on there.

19 A. Yes, ma'am.

20 Q. And did you tell -- you're discussing with
21 Mr. Sanchez in the letter some of the benefits that
22 could accrue to him if he were to become a
23 Government witness; right?

24 A. That's correct.

25 Q. And did you tell him in the letter that he

1 could get a new identity that comes with a new
2 criminal history record?

3 A. It says, "New identity record means you
4 guys can go hunting again legally. Think of a real
5 life and all its perks and pleasures. Happy
6 birthday."

7 Q. Let me just break that down because you
8 read it pretty fast. The question that was pending
9 was: Did you discuss with him the benefits he could
10 get if he would sign up as a Government witness?

11 A. Yes. If he does his homework, yes, he can
12 get that.

13 Q. If he does his homework?

14 A. That's what I did.

15 Q. And did one of those benefits include a
16 new identity?

17 A. I don't know if it's to the extent that I
18 believe it is, because I had my family Google it and
19 send me articles about procedures of securing WITSEC
20 and interviews from people who were in WITSEC. And
21 I may be not correct about this, but it may be
22 correct; it may not. That's what I got.

23 Q. But it was your state of mind, at least,
24 when you wrote this letter?

25 A. That I hope for that.

1 Q. That by becoming a Government witness, you
2 have the chance at getting a new identity; right?

3 A. That's correct.

4 Q. That comes with a clean criminal record?

5 A. I don't know if they clean your record.
6 That's what I said, yes.

7 Q. But that was your state of mind; you
8 thought that was true?

9 A. Yes.

10 Q. And in fact, in this letter what you
11 communicated to Mr. Sanchez -- you know that when he
12 was a young kid, that Daniel liked to go hunting
13 with his family?

14 A. Yes. I know Dan very well, yes.

15 Q. And he speaks fondly of that, that time?

16 A. Yes, ma'am.

17 Q. And you knew that what you're
18 communicating to him in this PS is that if he gets a
19 new identity and a clean criminal record, that means
20 that he can go and do something that he really
21 enjoyed, which was hunting, and he can do that
22 legally?

23 A. When I brought this up to -- when Acee
24 read this, he told me, "Well, with a bow and arrow."

25 So I assume they're not cleaning the

1 record.

2 Q. But you wrote this.

3 A. Yes.

4 Q. And then later, you spoke to Acee about it
5 and he told you you're wrong?

6 A. When I gave him the letter, yes.

7 Q. And so when you wrote this letter, it was
8 your state of mind that by becoming a Government
9 witness, you certainly had a chance of getting a new
10 identity with a new criminal record?

11 A. Yes.

12 Q. And for you, that would mean a new
13 identity as a person that doesn't have to register
14 as a sex offender?

15 A. I wouldn't have to register if I would
16 have went to trial either.

17 MS. JACKS: Objection, Your Honor. That's
18 not responsive to the question.

19 THE COURT: We'll strike the answer.

20 MS. JACKS: Please.

21 BY MS. JACKS:

22 Q. Mr. Rodriguez, can you answer the
23 question?

24 A. Can you ask it again?

25 Q. Yeah. The question was: In your case,

1 what your thought was, that you would get a new
2 identity that came with a clean criminal record.

3 A. That's correct.

4 Q. And that you wouldn't have to register as
5 a sex offender?

6 A. Who knows? I might. I don't know.
7 That's my mentality at the time, yes.

8 Q. That was certainly your mentality.

9 A. Yes, ma'am.

10 Q. And this letter was written November 9 of
11 2017; right?

12 A. If that's the date on the letter, yes.

13 Q. A couple of weeks after you made your deal
14 with the Government to become their witness?

15 A. Yes, ma'am.

16 MS. JACKS: I have nothing further.

17 THE COURT: Thank you, Ms. Jacks.

18 Ms. Armijo, do you have redirect of Mr.
19 Rodriguez?

20 REDIRECT EXAMINATION

21 BY MS. ARMIJO:

22 Q. Mr. Rodriguez, I'm going to first start
23 actually with -- I have a copy here of Defendants'
24 Exhibit EY, which, as you can see on the Elmo, is
25 the exhibit that Ms. Jacks wrote on when she was

1 talking to you about a timeline. Does that appear
2 to be a copy of it?

3 A. Yes, ma'am.

4 Q. And I recall at one point even, you were
5 talking about -- I'm looking here at March 2 through
6 the 3rd, specifically you were trying to remember a
7 point in time and put the references, and you said,
8 "Yes, after I -- after Dan and I read it, I sent it
9 back under the door." Do you recall that?

10 A. Yes.

11 Q. Okay. But she didn't put that there, did
12 she?

13 A. No, she did not.

14 Q. So what I'm going to do is: I'm going to
15 go through -- because I think -- and maybe add some
16 things to this. Now, you indicated on March 6,
17 2014, Number 1, Mr. Urquizo arrives at the unit, and
18 then you said, "Mario Rodriguez slides a note under
19 the door to Lupe Urquizo."

20 A. Right.

21 Q. Was anybody with you at that time?

22 A. Timothy Martinez.

23 Q. And that's the incident, so I'm going to
24 write --

25 THE COURT: Hold on just a second. I

1 think probably the way we ought to do this is, why
2 don't you make a copy of that?

3 MS. ARMIJO: This is not the original.

4 MS. JACKS: It's a copy. So I have no
5 objection.

6 THE COURT: Do you want to mark it as a
7 Government's Exhibit?

8 MS. ARMIJO: I'll mark it later, Your
9 Honor. This is a copy. I believe the original is
10 yellow and up there.

11 MR. VILLA: Your Honor, I didn't realize
12 it was a copy.

13 MS. ARMIJO: Sorry if I didn't make that
14 clear. This is not yellow. In fact, I'm going to
15 put over here -- but that is different copy.

16 BY MS. ARMIJO:

17 Q. Okay. So Number 1, Urquizo arrives at
18 unit 1-A and you slide a note, and I believe you
19 testified yesterday that Timothy Martinez was with
20 you.

21 A. Yes, ma'am.

22 Q. And that's when you kind of were
23 introducing him to him?

24 A. Introducing him to him and asking him if
25 he had the syringe.

1 Q. So I'm going to add "TR with MR."

2 And then the next thing you have under
3 there is that LU, Lupe Urquizo, passes a note to
4 you, and it says here, "by a third party under the
5 same door as door number 2."

6 Now, who was that third party?

7 A. Carlos Herrera.

8 Q. And how do you know that?

9 A. Well, I know his voice. I know I called
10 him to the door.

11 Q. You called for Carlos Herrera?

12 A. I called Lazy.

13 Q. Lazy?

14 A. Yes, ma'am.

15 Q. His nickname?

16 A. Yes, ma'am.

17 I think when you put TR, it's TM.

18 Q. Thank you.

19 Okay. So this third party is actually
20 Carlos Herrera? We'll put CH for him.

21 MS. JACKS: Your Honor, I believe that
22 misstates the testimony. I think he was guessing as
23 to whether it was Mr. Herrera. So we put third
24 party to indicate he was unsure.

25 THE WITNESS: I'm pretty sure it was

1 Carlos Herrera.

2 THE COURT: Let me do this: I'll let you
3 go back on recross. But let me have Ms. Armijo go
4 through her chart with the witness.

5 MS. JACKS: That's fine. Can we have it
6 numbered?

7 MS. ARMIJO: What is our next number?
8 755.

9 MS. JACKS: Thank you.

10 BY MS. ARMIJO:

11 Q. Now --

12 A. I think one of these instances was Carlos
13 Herrera. I'm not sure if it was the circled three
14 or four, but I know one of them was him.

15 Q. Okay. So Lupe Urquizo passes a note to
16 you by this person under the same note, and then
17 Number 4, just so that we're clear, Mario Rodriguez
18 slides a second note under the same door to Lupe
19 Urquizo by third party.

20 A. That's correct.

21 Q. Okay. So one of these, Lupe is passing
22 you a note through somebody; and then in number 4,
23 you're passing a note back to Lupe through somebody;
24 is that correct?

25 A. That's correct.

1 Q. Okay. Now -- and you say third party.
2 Now, which one did you call Lazy out to, if you
3 recall?

4 A. The only person I went through in that pod
5 was Carlos Herrera, so I think I was calling for him
6 on one of them, and he wasn't near the door. So I
7 just slid it, told him to give it to Lupe. I don't
8 know which one it was.

9 Q. The other incident, what happened?

10 A. I responded to the letter that I got from
11 Urquizo and slid it back to him, the response.

12 Q. Okay. So you call out for Lazy here. Is
13 that what you're saying?

14 A. I called out for Lazy both times. But I
15 only got him on one time.

16 Q. Okay. You called out for him on 3 and 4?

17 MS. BHALLA: Your Honor, I have an
18 objection. I think the witness testified he doesn't
19 know which time he gave it to Carlos and which time
20 he didn't. I think that that is misleading. If
21 he's not clear which one it was, we should leave it
22 as third party.

23 THE COURT: I'll let Ms. Armijo put her
24 chart together and he can testify. And you can work
25 on it on recross.

1 BY MS. ARMIJO:

2 Q. So you're not sure which time. So I want
3 to be sure. Did you call for Carlos Herrera each
4 time?

5 A. Yes.

6 Q. And so you did on the other time, as well,
7 number 4?

8 A. Yes, ma'am.

9 Q. All right. Does that accurately reflect
10 each of those incidents?

11 A. Yes.

12 Q. And on one of these incidents did he
13 actually -- "he" being Carlos Herrera -- ever speak
14 back to you?

15 A. I just told him to give this to Lupe, and
16 he said, "All right." That was it.

17 Q. And which time did he say "All right"?

18 A. I can't recall.

19 Q. Okay. One of those times he said "All
20 right"?

21 A. Yes, ma'am.

22 Q. Okay. And so we'll just leave it like
23 that. But one of these times is "All right."

24 Now, for number 3 and, 4 was anybody with
25 you when you did those?

1 A. No.

2 Q. Okay. Then we're going to go to March.

3 Now, was there anything else of significance for
4 March 6 of 2014 regarding the Molina murder? Did
5 you have any conversations with anybody that's not
6 reflected here on Friday, the day that Mr. Urquizo
7 came?

8 A. I think the only thing that's missing here
9 is when we observed the CO writing the names of the
10 new arrivals on the chalk board, on the white board
11 in the bubble. That's only thing that's missing.

12 Q. Okay. And who is "we"?

13 A. Myself and the rest of the inmates in blue
14 pod.

15 Q. So that's when you're talking about you
16 knew the train was coming?

17 A. Yes, ma'am.

18 Q. So I'm going to say up here before this,
19 "observed board." How's that?

20 A. The white board. We go to the top tier,
21 and you can see what's going on in the bubble in the
22 control center.

23 Q. Okay. Now you said "with other members of
24 the pod." Do you recall specifically anybody with
25 you?

1 A. I think the only members that were there
2 were myself, Daniel Sanchez, Jerry Montoya, Javier
3 Molina.

4 Q. Jerry Montoya?

5 A. Yes, ma'am.

6 Q. Okay. And who else? I wrote Jerry
7 Montoya.

8 A. Oh, Jerry Armenta. I don't think Ronald
9 Sanchez was paying attention to it. Javier Molina,
10 Dan Sanchez.

11 Q. Javier Molina was there, as well?

12 A. Yes.

13 Q. That's the same initials. I'm going to
14 write "Javier" for him, as Jerry Montoya.

15 A. And myself. Rudy Perez was in his cell;
16 he wasn't out for that. I think that's all that was
17 there that didn't work in the pod for the wheelchair
18 program.

19 Q. Now, we're going to March 7, and I believe
20 the first thing that we have here is "Went to yard
21 and on the way talked through yellow pod main door."
22 Okay. And what happened during this incident?

23 A. I spoke to Carlos Herrera --

24 Q. Okay.

25 A. -- about asking Lupe if he got that.

1 Q. What did you speak to him about?

2 A. Asked him if Lupe had had that, if he got
3 that -- the paperwork. He thought I was asking
4 about the syringe. I told him no.

5 Q. Did you clear that up?

6 A. I told him, "No, the paperwork."

7 He didn't know what I was talking about,
8 so he talked to Lupe Urquizo and came back and told
9 me, yes, he had it.

10 Q. So you asked Carlos Herrera about it.

11 A. I did.

12 Q. And Carlos Herrera came back and told you
13 that he had it?

14 A. He went and talked to Lupe Urquizo and
15 told me that Lupe Urquizo had it.

16 Q. And was anybody else with you at this time
17 involved in this?

18 A. All blue pod, but I was the only one
19 speaking to Carlos Herrera.

20 Q. Was anybody -- did you talk to anybody
21 about what you were doing?

22 A. Not until --

23 Q. Did you say, "Hey, this is what I'm
24 doing," anything like that?

25 A. No.

1 Q. Okay. Then after lunch you got the
2 paperwork from under the emergency door; is that
3 correct?

4 A. That's correct.

5 Q. Who did you get the paperwork from?

6 A. I think on Number 1 right there --

7 Q. Okay.

8 A. -- when we went to the yard, I had spoke
9 to Daniel Sanchez about the paperwork being there.

10 THE COURT: Ms. Armijo, would this be a
11 good time for us to take our lunch break?

12 MS. ARMIJO: Yes, Your Honor.

13 THE COURT: All right. We'll be in recess
14 for about an hour. All rise.

15 (The jury left the courtroom.)

16 MS. ARMIJO: Your Honor, we have a brief
17 security issue to discuss with you.

18 THE COURT: Okay.

19 MS. ARMIJO: I don't think we need to
20 approach. Mr. Rodriguez can leave.

21 THE COURT: All right. Why don't you go
22 ahead and exit, Mr. Rodriguez?

23 MS. ARMIJO: I'll ask Marshal Joe Castro.

24 THE CLERK: Can we get another marshal,
25 please?

1 MARSHAL CASTRO: Your Honor, Joe Castro
2 with the marshals. We were notified a while ago
3 that there was a shakedown at Dona Ana, Anthony
4 Baca's cell, and they found a shank that was the
5 half -- back end of a spoon that was starting to be
6 sharpened, and was hidden behind his bathroom
7 mirror.

8 THE COURT: All right. Thank you, Mr.
9 Castro.

10 MARSHAL CASTRO: Thank you.

11 THE COURT: Can we take it up maybe after
12 lunch, Mr. Villa?

13 MR. VILLA: Yes, Your Honor. We can do it
14 before the jury comes in.

15 THE COURT: Let's do that. We'll see
16 y'all in about an hour.

17 (Lunch recess.)

18 THE COURT: All right. Let's go on the
19 record.

20 Mr. Villa, I think you had something you
21 wanted to raise before the lunch hour?

22 MR. VILLA: Yes, Your Honor. I received
23 an email from Deputy Mickendrow of the U.S. Marshals
24 concerning the issue of the tablet, and he was
25 searching, if the Court recalls, for Robert

1 Martinez' tablet. He informed me that he found it.
2 It's up north. He didn't say exactly what that
3 means. I think that might mean it's in PNM. But
4 likely, the other tablets -- we would ask the Court
5 order that they be immediately sent to the expert
6 hired by Mr. Baca's team so that he can review it
7 for the evidence of tampering and other things like
8 that.

9 MS. ARMIJO: Your Honor, I think that
10 before it's sent anywhere, it should be examined
11 by -- just like all the other tablets -- examined
12 first by New Mexico Corrections, because I don't
13 believe that this tablet was tampered with. And I
14 know that Mr. Martinez, through his attorney, is
15 very interested in getting his tablet back, and he
16 will be testifying. So I think it would cause a
17 delay. There has been no showing that he tampered
18 with it. That's the first step, to see if it was
19 even tampered with. And if it was not tampered
20 with, then it shouldn't (sic) be returned to the
21 inmate. Because that's what's been done with all of
22 these. Any that were tampered with or believed to
23 be tampered with were sent for analysis.

24 THE COURT: Well, do you have any trouble
25 with them making a quick examination to see whether

1 it's been tampered with, and then we'll go from
2 there?

3 MR. VILLA: Well, Your Honor, I guess I'd
4 want to hear from Mr. Mickendrow whether it has. I
5 mean, the fact that it was lost or missing or seized
6 from Mr. Martinez leads me to believe that it was
7 tampered with, because that's the only basis to take
8 it from Mr. Martinez.

9 I don't necessarily have a problem with
10 the Corrections Department looking at it. But
11 frankly, Your Honor, I've never seen them do
12 anything quickly. And we need to get this to our
13 expert before we cross-examine Mr. Martinez, because
14 we have found from the tablets that were provided,
15 that were seized, that there was quite a bit of
16 information on there that we can use in
17 cross-examination.

18 THE COURT: Well, why don't we do this.
19 Let's go ahead. Why don't you talk to Deputy
20 Mickendrow. And if we need to put something on the
21 record, we'll do it. See what he says. You go
22 ahead and get it to Corrections. Tell them to,
23 pronto, look at it and give us a report.

24 MS. ARMIJO: And I believe it's up north.
25 If somebody from -- is it up north or down here?

1 MARSHAL CASTRO: Deputy Mickendrow is
2 handling that matter.

3 MS. ARMIJO: The email said it was up
4 north. So what we can do is, I'll check as soon as
5 I'm done with this witness. I'll check to see if
6 they can have somebody up there do it. I know for
7 certain we had somebody down here, south, do them.
8 But that can be done within a day, Your Honor.

9 And the reason that the tablet was lost
10 was because Mr. Martinez was moved around. And they
11 were all seized as part of that day when we learned
12 that there was tampering. So it was not
13 specifically seized because it was. There were
14 several that were not tampered with.

15 THE COURT: All right. Let's see if we
16 can move it along and get some report. So if Deputy
17 Mickendrow gets in here, you can ask him, put it on
18 the record, and then we'll go from there.

19 MR. VILLA: Lastly, I think I may be
20 mistaken, but I don't believe we ever got
21 Mr. Timothy Martinez' tablet. I believe it was one
22 of the ones that there is some allegation of
23 tampering. The Government might be able to correct
24 me on that. Mr. Mickendrow, in his email, also
25 acquired whether there were additional inmates for

1 whom we want their tablets, and I think that may be
2 the one that's outstanding.

3 THE COURT: If that one is ready to go,
4 any problem turning that over to the expert?

5 MS. ARMIJO: Turning which one over? I'm
6 sorry.

7 THE COURT: Timothy Martinez's.

8 MR. VILLA: Timothy Martinez's.

9 MS. ARMIJO: Doesn't the FBI have those
10 and is analyzing them? I believe the FBI has that
11 and is analyzing them.

12 MR. VILLA: I think the issue that -- the
13 tablets that did get sent to the expert was because
14 the FBI didn't have sufficient time to analyze them.
15 And we're happy to let the FBI analyze them as much
16 as they want, but we'd like our shot at it.

17 MS. ARMIJO: I don't know where Mr.
18 Martinez' tablet is, because I believe the FBI does
19 not have his, based on the list that I've just seen.
20 I don't know where his tablet is.

21 THE COURT: It's not one of the ones
22 you're showing is at the FBI?

23 MS. ARMIJO: No. And we know his was
24 tampered with. We do know that. Timothy Martinez
25 has admitted, and he will testify that he tampered

1 with it.

2 THE COURT: We don't know where it is?

3 MS. ARMIJO: I don't know where it is.

4 MR. VILLA: Well, if it's in his
5 possession, I assume the Government can talk to his
6 attorney -- he's cooperating with the Government --
7 and it can be immediately seized and sent to our
8 expert.

9 MR. LOWRY: We got an email from
10 Mickendrow that said that he had the tablet in his
11 possession.

12 THE COURT: T. Martinez'?

13 MR. LOWRY: Yes, Your Honor. And the only
14 reason -- I think if we can get it Fed Ex'd out to
15 our expert, they can do a mirror image and return
16 the tablet in 36 hours.

17 THE COURT: Can we do that, Ms. Armijo?
18 It's not in the FBI's possession.

19 MR. LOWRY: My understanding it's in the
20 U.S. Marshal's possession.

21 THE COURT: Well, tell Deputy Mickendrow
22 that he should turn it over to your expert, give him
23 the address, tell him to get it out there. Tell
24 your expert not to destroy anything.

25 Ms. Standridge, is that going to be

1 Exhibit G, the Baca report? What's the next number?

2 THE CLERK: H.

3 THE COURT: I'm going to mark the
4 materials that Deputy Castro gave us -- mark it as
5 Exhibit H to the clerk's minutes.

6 MR. LOWRY: Sure.

7 THE COURT: All right. So you'll get an
8 address to Deputy Mickendrow, and you'll tell your
9 expert just to make an image and then return it?

10 MR. LOWRY: Absolutely.

11 THE COURT: All right. All rise.

12 (The jury entered the courtroom.)

13 THE COURT: All right. Everyone be
14 seated.

15 All right, Mr. Rodriguez. I'll remind you
16 that you're still under oath.

17 THE WITNESS: Yes.

18 THE COURT: Ms. Armijo, if you wish to
19 continue your redirect of Mr. Rodriguez, you may do
20 so at this time.

21 MS. ARMIJO: Thank you, Your Honor.

22 BY MS. ARMIJO:

23 Q. Mr. Rodriguez, I believe I'm putting back
24 up Government's Exhibit 755, and I left a little
25 sticky to myself that we had stopped talking

1 about -- did you have a conversation with Mr.
2 Sanchez?

3 A. At what point in time? At what point?

4 Q. That's what I'm looking at.

5 A. Oh, yes.

6 Q. I know I wrote here, this is March 7, you
7 asked Carlos Herrera about the paperwork, and then
8 Carlos Herrera confirms that he had paperwork; is
9 that correct?

10 A. Yes.

11 Q. Okay.

12 MS. JACKS: Objection, I think that
13 misstates the testimony. It was unclear about who
14 "he" is.

15 THE COURT: I'll let you work on it on
16 recross. Overruled.

17 BY MS. ARMIJO:

18 Q. Okay. That you spoke to?

19 A. Yes. After this conversation with Carlos
20 Herrera at the yellow pod door, we went to yard.
21 And in the yard, I spoke to Daniel Sanchez about
22 them having the paperwork.

23 Q. Okay. So the yard incident -- is that
24 between Number 1 and 2?

25 A. Yes, ma'am.

1 Q. Okay. So that would be, like, 1.5 or
2 something?

3 A. It's an hour yard.

4 Q. And that would take place between 1 and 2?

5 A. No, let me see.

6 Q. Because Number 1 is, you went to the yard;
7 on the way, you talked through yellow pod main door.

8 A. This is maybe 9:00 to 10:00.

9 Q. Okay. So 9:00 to 10:00, so it's before
10 Number 1?

11 A. Yes. It's either 9:00 to 10:00, or 10:00
12 to 11:00.

13 Q. What would between 9:00 to 10:00?

14 A. We're in yard.

15 Q. Okay.

16 A. This is right here, where we're -- they're
17 talking about before lunch, we're on our way going
18 to yard.

19 Q. Okay.

20 A. So it says 11:00 to 11:30; before lunch,
21 11:00 to 11:30. That's the lunch hour that she put.
22 That's not the time that I was speaking to Carlos
23 Herrera. That's just before it.

24 Q. So lunch is between 11:00 and 11:30?

25 A. Right, and this conversation at the yellow

1 door took place before that.

2 Q. Okay. So this is: Went to yard and on
3 the way, and now I guess we want to get to something
4 happened at the yard; correct?

5 A. Right; correct.

6 Q. And that would be between what's marked
7 Number 1 and Number 2?

8 A. It would be attached to Number 1.

9 Q. Okay. Let me just do this. I'm going to
10 get another piece of paper and write Number 1, and
11 I'm going to write "continued." Okay. So what
12 happened at the yard?

13 A. After this conversation at the door, we
14 leave the unit, blue pod, and we go out the dog run,
15 and we continue to go to the big yard.

16 Q. Who is "we"?

17 A. The whole blue pod: Myself, Daniel
18 Sanchez, Jerry Montoya, Jerry Armenta, Ronald
19 Sanchez --

20 Q. Do you know if Rudy Perez went, or did he
21 say in his room, do you think?

22 A. I think he stayed in his room that day.
23 Javier Molina went, and I think that's it.

24 Q. Okay. And while you're at yard, do you
25 have a conversation with Daniel Sanchez?

1 A. I did.

2 Q. Okay. And what is that conversation?

3 A. Myself and Daniel Sanchez, we spoke to
4 Ernest Guerrero about Benjamin Clark attempting to
5 put a hit on Lupe Urquizo.

6 And after that conversation I spoke to
7 Daniel Sanchez about the paperwork arriving, and
8 just let him know it was there. We didn't really go
9 into depth on it. I told him it was there.

10 Q. What was his reaction?

11 A. He said, "Okay."

12 Q. So I'm going to put here "MR tells DS at
13 the yard that paperwork arrived."

14 A. That's correct.

15 Q. Okay. And is there any further
16 conversation at that point?

17 A. I think there was a mention of Mauricio
18 Varela getting his property. And that was about it.
19 We went our ways.

20 Q. Okay. Then Number 2, you say, "MR,"
21 that's you, "gets paperwork from under the emergency
22 door." That was after lunch; correct?

23 A. Correct.

24 Q. Who gives you the paperwork?

25 A. Carlos Herrera.

1 Q. Okay. Under the door. I'm going to put
2 "from Carlos Herrera." And is anybody with you at
3 that point?

4 A. No.

5 Q. Then what do you do with that?

6 A. I called Dan Dan, and we proceed to the
7 stoop in front of my cell, cell 111, and we read it.

8 Q. And so between Number 2 -- and you read it
9 and then you pass it back later?

10 A. I read it, I put it in the back in the
11 manila envelope, and I pass it back.

12 Q. Okay. Who do you read it with?

13 A. Daniel Sanchez.

14 Q. Okay. So I'm going to add in here "DS."
15 I don't want to mess that up. "DS and MR review
16 paperwork." And at some point while reading the
17 paperwork, did you get a chance to fully look at it?
18 Or what happened?

19 A. No, I did not.

20 Q. What happened?

21 A. I was going through it, and before I
22 finished reading it, Dan said, "It's done."

23 And I was like, "Okay. Well, it's done,
24 then."

25 Q. And what did you take "It's done" to mean?

1 A. "It's done" means he's going to get hit.
2 I was still looking for names that he mentioned, and
3 anything like that that was really real serious.

4 Q. Now, why didn't you at this point say,
5 "Hold on a minute. Let me look some more." Why did
6 you just at that point just concede to it?

7 A. I knew that it would go against the
8 politics and I wouldn't get to move any further
9 within the SNM if I say, "Don't hit him," because it
10 looks like I'm self-serving; that I just got to
11 Southern New Mexico Correctional Facility, and I
12 want to stay there longer and not have a hit be
13 conducted, because I know that if there is a hit
14 conducted, the majority of us are going to go back
15 to PNM Level 6. It would look like I was
16 self-serving over the rule of the onda.

17 Q. And where was Daniel Sanchez', his
18 position with the SNM, in comparison to yours?

19 A. I was right there next to him. He was my
20 big brother. I was his right-hand man. He was the
21 leader.

22 Q. Then the next thing we have here is "MR
23 and DS pass the paperwork back"?

24 A. Yes.

25 Q. Okay. And who do you pass the paper

1 paperwork back to?

2 A. To Carlos Herrera.

3 Q. And how did that come about? Did you call
4 him again? Before you testified that you said,
5 "Hey, Lazy."

6 A. We went to the door, called Lazy, and when
7 I gave it to him, Dan had mentioned something about
8 Wednesday. And I take it Carlos Herrera took it as
9 we wanted to wait till Wednesday because there was
10 visits, and Carlos Herrera said, "Just get it done."

11 I told him, "Hold on. We'll figure it
12 out. Don't worry about it. We'll figure it out."

13 And me and Daniel Sanchez left the door.

14 Q. So CH says, "Just get it done."

15 A. Yeah.

16 Q. After that, between 3:00 and 4:00, you
17 have "MR physically took the piece from the walker."

18 Now, I recall your testimony was that you
19 talked about how you had walked by Rudy Perez' cell,
20 and Daniel Sanchez was there. And then Daniel
21 Sanchez called you back. Is this somewhere around
22 here?

23 A. Yes, but I think before it got to that
24 point, there was a time where I think after Daniel
25 and I read it that -- I can't recall exactly, but I

1 asked him, "You and me, or what?"

2 And he said, "No, I have some guys need to
3 earn their bones."

4 So that's somewhere in between. Let me --
5 yes.

6 Q. Now, is that while you still had the
7 paperwork?

8 A. It might have been before we had the
9 paperwork. Because when I left, when Daniel Sanchez
10 and I left the door from giving the paperwork to
11 Carlos Herrera, he stopped at Rudy Perez' house.

12 Q. Okay. So we'll get to that in a second.

13 A. Okay.

14 Q. You said, "You and me," and then he said,
15 "No, I have somebody."

16 Where do you think that took place?

17 A. Let me see.

18 Q. Was that potentially after you confirmed
19 that the paperwork was there through Carlos Herrera?

20 A. It has to -- we came back from the yard
21 and it was a conversation that he and I had at the
22 table.

23 Q. Okay. So was that before you get the
24 paperwork?

25 A. I'm trying to recall. It might have been

1 a little bit before.

2 Q. Maybe between 1 and 2?

3 A. It has to be in between 12:00 and 1:00.

4 Q. Oh, okay. I'm sorry. I meant between 1
5 and 2.

6 A. Okay. Yeah, 1 and 2, on that number.

7 Q. Okay. So between 1 and 2?

8 A. Because we come out after count to 12:00.

9 Q. So I'm going to put, like, a 1.5 on the
10 other page, and this is after count?

11 A. That's correct.

12 Q. Okay. After count. Then you said that
13 you had a conversation with Daniel Sanchez?

14 A. Yes.

15 Q. And what do you say to him?

16 A. "Me and you, or what?" Same conversation
17 about covering the cameras took place at this time.

18 Q. And what's his response?

19 A. That the cell is a blind spot.

20 Q. No, no, no, no, no. After you say "me or
21 you or what" --

22 A. He says, No, he has some people that need
23 to earn their bones.

24 Q. What did you take that to mean?

25 A. He was going to choose a couple

1 individuals to conduct the hit.

2 Q. All right. Then I'm going to put that you
3 had a conversation about the cameras.

4 A. Right.

5 Q. What was that about?

6 A. About covering the cameras.

7 Q. And what did you discuss?

8 A. I guess where -- I think it was where the
9 hit was going to take place. And I asked him about
10 covering the cameras, and he said, "No, it's a blind
11 spot. Javier Molina's cell."

12 Q. Okay. So now we're going to go to --
13 let's see. "Just get it done." I believe we left
14 off at Number 3 says, "Just get it done," by Carlos
15 Herrera?

16 A. That's correct.

17 Q. And you were talking about where -- at
18 what point -- you mentioned yesterday you said you
19 saw Daniel Sanchez by Rudy Perez' cell.

20 A. When we were walking back from the
21 emergency door, he stopped at Rudy Perez' house, and
22 I continued on to my cell to look for the weapon I
23 had on the hamper. I had been working on it.

24 Q. Okay. So right here at Number 3?

25 A. Yes.

1 Q. So now we're going to go to -- we're going
2 to add to Number 3. And then you see Daniel Sanchez
3 at Rudy Perez' cell?

4 A. Yeah. As we were walking back from the
5 emergency door, he stops at Rudy Perez' cell, which
6 was the second door away from the emergency door.

7 Q. And then Number 4 is "MR physically took
8 piece from walker and put it in hamper." What
9 happened before then?

10 A. I was in my cell looking at the weapon I'd
11 been working on in the hamper. And Daniel Sanchez
12 called me to Rudy Perez' door, which was closed at
13 the time.

14 Q. I'm going to put -- just so that we're
15 clear, as part of Number 3, the continuation, "DS
16 called to you RP cell"?

17 A. Yes.

18 Q. Okay.

19 A. He pointed out the bar on the walker.

20 Q. Okay.

21 A. And told me to get that.

22 Q. All right. Then I believe Number 4 is "MR
23 physically took the piece from the walker and put in
24 hamper in your cell"; is that correct?

25 A. Yes.

1 Q. Now, when you did that, Rudy Perez was
2 present?

3 A. In his cell, yes. Not in my cell, in the
4 hamper, but --

5 Q. And let's see. So I'm going to put here,
6 "RP present." How's that?

7 A. Yes.

8 Q. What did Rudy Perez tell you?

9 A. "I'm down for whatever, as long as it's
10 not me."

11 Q. Okay. All right. Then we're going to go
12 to the second page of what will be Exhibit Number
13 755.

14 Then there was the phone yard. Can you
15 explain, what does the phone yard mean?

16 A. The phone yard is a smaller rec cage right
17 outside the unit where there is a handball court, a
18 punching bag, a medicine ball, and a pull-up bar.
19 They call it the phone yard because the caseworkers'
20 offices are right there. If you go and make legal
21 calls or emergency phone calls, you go to that area.

22 Q. Just to be clear, that's an outside yard?

23 A. An outside yard, yes, ma'am.

24 Q. And this isn't the area that we've seen
25 inside the pod where there is a phone?

1 A. No.

2 Q. Okay. And you were making shanks during
3 that time period?

4 A. Yes.

5 Q. Okay. Anything else significant during
6 that period?

7 A. No.

8 Q. Number 6 was, the wheelchair program comes
9 in and you have to speak to Timothy Martinez. Now,
10 I think we may have left something out, because
11 where is the plan that you need to -- in here about
12 you having to talk to Tim Martinez?

13 A. The plan was at the time when he said that
14 he had people to earn his bones --

15 Q. Okay.

16 A. -- I believe that at some point in time in
17 between there and getting that weapon, he told me to
18 speak to Timothy, because Timothy wouldn't listen to
19 him.

20 Q. Okay. So that would be right here with
21 his conversation about people having to earn their
22 bones?

23 A. Yes, in between the time I got the weapon
24 and that.

25 Q. Okay. So the weapon is Number 4?

1 A. No -- oh, yes, yes. Let me see.

2 Q. The weapon is Number 4?

3 A. Yes, in between 3 and 4.

4 Q. So it's before you get the weapon or
5 after?

6 A. Before. I think it's right there by 1.5.
7 Above. Above.

8 Q. Above 1.5?

9 A. Yes, in this same area right here.

10 Q. So is it part of 1.5?

11 A. Part of 1.5, yes.

12 Q. It says, "No, have some people that need
13 to earn your bones," right there?

14 A. I don't recall exactly when he told me to
15 talk to Timothy, but it had to be around this area.

16 Q. Then you had a conversation about cameras,
17 and then I'm just going to put over here -- and I'm
18 going to put "Conversation about Timothy." What did
19 he tell you and who told you?

20 A. Jerry Armenta and Daniel Sanchez.

21 Q. Daniel Sanchez told you what?

22 A. That I need to speak to Timothy, because
23 Timothy would not listen to him.

24 Q. What did he tell you to tell Timothy?

25 A. That he needed to knock him the fuck out.

1 Q. Knock who out?

2 A. Molina.

3 Q. What was this conversation about?

4 A. About the hit on Javier Molina.

5 Q. So he told you to speak to Timothy

6 Martinez, and put "to knock him the fuck out"?

7 A. Yes, ma'am.

8 Q. Is that --

9 A. That's exactly what he said.

10 Q. Now, then, we're going to "Wheelchair
11 program comes out and Tim Martinez." You speak with
12 him at that point; correct?

13 A. I do.

14 Q. Okay. Is it just you and Mr. Martinez?

15 A. Just me and Timothy Martinez.

16 Q. And then, let's see, the phone yard comes
17 in, and then what happens at that point?

18 A. Everyone is just hanging around. There's
19 a few people that I think jumped in the shower,
20 waiting for 4:00 count.

21 Q. Because there is a very short time period,
22 I think 7 and 8.

23 A. They gave the inmates about 10 minutes to
24 get their stuff together, make their last coffee or
25 soup, and go into count.

1 Q. Anything happen in that period that you
2 can recall?

3 A. No.

4 Q. So then we go to count, and dinner, which
5 is when you are in your cell; is that correct?

6 A. The 4:00 p.m. to 5:00 p.m.?

7 Q. Yes.

8 A. Yes, ma'am.

9 Q. And during this count, that's when you're
10 making weapons?

11 A. I'm sharpening them and putting handles on
12 them.

13 Q. Okay. And then at 5:00 p.m. the cell
14 doors open for everyone; is that correct?

15 A. Yes, ma'am.

16 Q. It says that you talked to Timothy
17 Martinez?

18 A. Yes.

19 Q. And what is the point of that
20 conversation?

21 A. Well, once the doors opened, I got up on
22 the top area by the TV, jumped the rail, pulled
23 myself to the top tier, and went and told him if
24 he's all right, "Are you ready?"

25 Q. Who said that?

1 A. I did.

2 Q. To who?

3 A. Timothy Martinez. And "I've been in this
4 position before. It's going to be all right. I'm
5 going to be right there. Don't worry about it."

6 Q. Now, was there a change in plan between --
7 for Timothy Martinez to knock him out, to choking
8 him?

9 A. Yes.

10 Q. When did that take place?

11 A. I think --

12 Q. That decision?

13 A. I think that decision took place a little
14 bit after the doors opened at 5:00 count.

15 Q. So is this while you're talking to Timothy
16 Martinez right here?

17 A. No.

18 Q. Okay.

19 A. In the camera footage, you see him go to
20 his house. That's when I go speak to him.

21 Q. Closer to 5:15-ish or 5:10?

22 A. Correct.

23 Q. So you first have a conversation with
24 Timothy Martinez. Then it says, "Jerry Armenta and
25 DS."

1 A. At the time I spoke to Timothy Martinez,
2 that's when he gave me the weapon that was Javier
3 Molina's.

4 Q. So I'm going to put here "MR gets Javier
5 shank." How is that?

6 A. Yes.

7 Q. Then "Jerry Armenta and DS," what's going
8 on with that?

9 A. When I come back down from Timothy
10 Martinez's house, I go into my room. When I turn
11 around, there's Jerry Armenta and Daniel Sanchez.
12 And I gave Armenta the shank.

13 Q. Okay. Now, you see Jerry Armenta and
14 Daniel Sanchez talking?

15 A. No.

16 Q. Okay. Are you a part of that
17 conversation?

18 A. I was never a part of any conversation
19 with Armenta, other than telling him Daniel Sanchez
20 was going to take care of his weapon.

21 Q. Okay. How do you know that Jerry Armenta
22 and Daniel Sanchez were talking? Did you see them,
23 or were you told by somebody to give him a shank?

24 A. I was told by Dan -- when they came to my
25 room, I was going to change my socks. I thought I

1 was going to take them to their cells. And Daniel
2 Sanchez came into the room with Armenta, and that's
3 when I gave Armenta the weapon. I never spoke with
4 him about the hit or nothing.

5 Q. So they just come into your room, and no
6 conversation?

7 A. I already knew what time it was, and who
8 the weapons were for.

9 Q. So I'm going to put "Jerry Armenta and DS
10 in" your cell?

11 A. Yes.

12 Q. And then with the three of you there, you
13 give Armenta the shank?

14 A. Yes, ma'am.

15 Q. Okay. And it's the three of you in your
16 cell.

17 A. Yes.

18 Q. Okay. Then do you go -- and at that
19 point, is that when you tell Jerry Montoya what's
20 going on?

21 A. After I gave Armenta the weapon, Daniel
22 Sanchez asked me if I had told -- he used his
23 nickname, Plazi, which is Jerry Montoya. He told
24 me, "Did you tell Plazi?"

25 I told him, "No. You were supposed to

1 tell him."

2 He goes, "Tell him."

3 And that was never part of the plan. I
4 was supposed to talk to Timothy, and he was supposed
5 to talk to Armenta and Montoya. At that time, I
6 wasn't really happy about that. I said, "All
7 right."

8 So I went to Jerry Montoya's cell, and I
9 gave him his weapon.

10 Q. I'm writing here, "Told by DS to go tell
11 Jerry Montoya."

12 A. And give him the weapon.

13 Q. "And give weapon." And is that what you
14 did?

15 A. Yes, ma'am.

16 Q. Okay. Now, before the assault begins, I
17 think we see you going down and talking on the table
18 with Mr. Sanchez?

19 A. Yes.

20 Q. Tell us about that and where that occurs.

21 A. I was coming from speaking with Timothy
22 Martinez. He told me that he was going to choke
23 Molina out. So I went to go tell Daniel Sanchez
24 what Timothy was going to do, instead of knock him
25 out physically.

1 Q. So this is 9 and 10. I'm going to do a
2 9.5 because that occurred before the assault;
3 correct?

4 A. Yes.

5 Q. I'm going to write -- and that's on the
6 video; correct?

7 A. Me talking to Daniel Sanchez?

8 Q. Yes.

9 A. Yes, ma'am.

10 Q. I'm sorry, I should put who goes and
11 tells. So "MR goes to DS." Now, why do you go tell
12 him about it?

13 A. Because it's a change in his plan.

14 Q. A change in whose plan?

15 A. Daniel Sanchez' plan.

16 Q. Okay. Getting approval?

17 A. Getting approval, and letting him know
18 that that's the way it's going to go down.

19 Q. Does he approve that change?

20 A. He just tells me to make sure it goes
21 right and to not leave the drugs, not to leave the
22 dope.

23 Q. Make sure it goes right?

24 A. Yes.

25 Q. And don't leave the dope?

1 A. Yes.

2 Q. All right.

3 A. I was walking away. He was calling the
4 halfers.

5 Q. Okay. The halfers. I believe you
6 explained that yesterday.

7 A. Yes.

8 Q. And then we have Number 10. I believe
9 that's on here, the assault begins on Molina;
10 correct?

11 A. Yes.

12 Q. Okay. And I'm just going to put on
13 here -- that's on the video; correct?

14 A. Yes, it is.

15 Q. I'm going to make a little notation to
16 video.

17 Now, after the assault, is there something
18 that you recall that you testified to that occurred
19 after the assault in reference to Daniel Sanchez
20 going to that emergency door?

21 A. Yes. He went to the top emergency door
22 and said, "How do you like that, baby?"

23 Q. And where is that in these numbers? Is
24 that after the assault?

25 A. It's after the assault. After the -- I

1 think I'm barely coming out of the shower, the top
2 shower.

3 Q. Okay. And so you're coming out of the
4 shower?

5 A. Right.

6 Q. And is the shower near that emergency
7 door?

8 A. It's on the top tier. I could see it when
9 you're coming out just straight.

10 Q. So what do you hear and see?

11 A. "How do you like that, baby," with Dan.

12 Q. "DS" for Daniel Sanchez. What does he
13 say?

14 A. "How do you like that, baby?"

15 Q. And how was he saying it?

16 A. Just like --

17 Q. I mean, was he saying, "How do you like
18 that baby," or was he excited?

19 A. He was excited, like a bragging tone.

20 Q. A what tone?

21 A. A bragging, like bragging, like, "How do
22 you like that, baby?" Yelling it loud through the
23 crack of the door.

24 Q. Okay. To the emergency door?

25 A. Yes, ma'am, the top tier emergency door.

1 Q. Do you know who was on the other side?

2 A. No. He was just yelling it to the pod.

3 There was no one inside, I don't think. Someone
4 yelled back before I went into my cell, "Fuck, yeah,
5 Dan."

6 Q. Do you know who that was?

7 A. It sounded like Carlos Herrera or Efrain
8 Martinez.

9 Q. You're not sure? Just somebody responds
10 to it?

11 A. I know -- from solitary confinement with
12 these individuals, I recognize their voices. Either
13 one of the two.

14 Q. Okay. So either Carlos Herrera or who?

15 A. Efrain Martinez.

16 Q. Respond back?

17 A. Yes.

18 Q. Now, I believe the investigation started,
19 and at some point you all were moved into different
20 cells?

21 A. Right.

22 Q. When did that occur?

23 A. After we're all locked down, I think when
24 the officers seen a drop of blood in front of my
25 house outside the cell.

1 Q. Right.

2 A. I start arguing with the CO. I got a hand
3 sanitizer with water and threw it out.

4 Q. Okay.

5 A. They attempted to take pictures of me. I
6 covered my window. And I put away the weapon, put
7 away the syringe, ate some food, and I got
8 handcuffed, and they took me out.

9 Q. I'm going to put that you were in your
10 cell. Was everybody locked down?

11 A. Everybody was locked down.

12 Q. I'm going to put "MR and others locked
13 down." Any idea what time that was? If you don't
14 remember, we're not going to put a time.

15 A. No, I don't remember. I don't know what
16 time it was.

17 Q. Now, and then there was something
18 yesterday you talked about, and then after that,
19 were you moved to another cell?

20 A. Yes.

21 Q. Was everybody moved to another cell?

22 A. At first, just myself and Jerry Armenta.

23 Q. Okay. Eventually was somebody else put
24 near you?

25 A. Yes. When I was moved to 2-A or 2-B, I

1 was living with Rudy Perez, Jerry Montoya, Jeffrey
2 Madrid, and Michael Hernandez; and Rudy Perez lived
3 right below me.

4 Q. Okay. I'm talking about the night of the
5 incident.

6 A. Yes, ma'am.

7 Q. Okay. So -- because I believe you made
8 reference to a comment yesterday about "Not my first
9 rodeo."

10 A. Right.

11 Q. Where is this conversation taking place?

12 A. This conversation is taking place in
13 either -- I don't know the unit, but I'm in the top
14 cell and Rudy Perez is living right under me.

15 Q. Is it after this, that same night, early
16 morning?

17 A. That same night, early morning, yes.

18 Q. So it's after you're moved to other cells?

19 A. Right. The conversations through the air
20 ducts.

21 Q. Okay. So I'm going to put "MR and RP
22 conversation."

23 MS. JACKS: We'd ask that that portion of
24 the testimony and the exhibit be limited to Mr.
25 Perez.

1 THE COURT: All right. I'll give a
2 limiting instruction to that effect. This testimony
3 can only be used in consideration of the charges
4 against Mr. Perez, not as to the other three
5 defendants.

6 MS. JACKS: And will that be marked on the
7 exhibit?

8 MS. ARMIJO: I can. I certainly can.
9 I'll put an asterisk here, and put "as to RP only."
10 BY MS. ARMIJO:

11 Q. All right. And you have a conversation
12 through the vents?

13 A. Yes.

14 Q. And I believe you said he indicated not
15 his first rodeo?

16 A. Yeah. This wasn't his first rodeo.

17 Q. And was there also conversation that you
18 tried to quash?

19 A. Yes.

20 Q. What was that in reference to?

21 A. When he came back from speaking to whoever
22 he spoke to, the interview process, he calls me and
23 asks me if everything is all good. I told him,
24 "Yeah, everything is all good."

25 He goes, "No, is everything all good with

1 those things?"

2 I told him, "Hey, hey, everything is all
3 good."

4 He goes, "Well, Dan," this and that --
5 "Everything is all good. Don't worry
6 about it. Everything is all good."

7 Q. I'm going to put "MR and RP conversation."
8 I'll just put "all good" as a little summary.

9 MR. LOWRY: Your Honor, we'd like a
10 similar limiting conversation with respect to the
11 Sanchez comments.

12 THE COURT: These will just be used
13 against Mr. Perez, not any of the other defendants.

14 Q. Now, does that appear to be kind of a
15 somewhat summary, including not just your actions
16 but those of other people?

17 A. A short version, yes, summary.

18 Q. Now, you were also asked questions by Ms.
19 Bhalla about an incident with Carlos Herrera that
20 you told law enforcement about?

21 A. Correct.

22 Q. Do you recall that?

23 A. The questions she asked me.

24 Q. Yeah, and do you recall her asking you
25 questions -- and this is just a yes or no -- about

1 an issue with Carlos Herrera regarding basically a
2 hit on him --

3 A. Yes, ma'am.

4 Q. -- while transportation?

5 A. Yes, ma'am.

6 Q. Okay. Now, in reference to that, is that
7 something that you told law enforcement on your own?

8 A. I did.

9 Q. And did you tell law enforcement that as
10 part of -- why did you tell law enforcement that?

11 MS. JACKS: Your Honor, I'm just going to
12 object and ask to approach.

13 THE COURT: You may.

14 (The following proceedings were held at
15 the bench.)

16 MS. JACKS: Sorry to interrupt. I thought
17 this was the area where Ms. Bhalla was leading the
18 witness because of her concern that something
19 inadmissible would come up against Mr. Sanchez. So
20 the open-ended question "Why" was just asking for
21 the inadmissible testimony.

22 MS. ARMIJO: No, I planned to lead him. I
23 asked him why. I didn't ask him what. I do plan to
24 lead him through it, so the specific deeds of the
25 defendants are not brought out.

1 MS. JACKS: I'll ask him.

2 MS. ARMIJO: No, I think it's important.

3 MS. JACKS: I'm concerned the witness is
4 going to state inadmissible --

5 MS. ARMIJO: I'm asking him a leading
6 question: Why.

7 THE COURT: Let's take it one at a time,
8 see if we can get through. Sounds like she's trying
9 to avoid it.

10 (The following proceedings were held in
11 open court.)

12 THE COURT: All right, Ms. Armijo.

13 BY MS. ARMIJO:

14 Q. Mr. Rodriguez, did you tell law
15 enforcement about that plan in an effort to actually
16 save Carlos Herrera's life? In other words, was
17 this something that law enforcement knew ahead of
18 time, or was it something that you were telling them
19 about?

20 A. I was telling them about. I was making
21 them aware of --

22 Q. I'm just going to -- you became aware of a
23 situation regarding it, regarding a plan in
24 reference to --

25 A. Yes.

1 Q. -- Mr. Herrera?

2 A. Yes, ma'am.

3 Q. And was that -- and don't tell me who, but
4 did you originate with that plan?

5 A. No.

6 Q. Was it other people? And again, don't
7 give me names. Was it other people that came up
8 with that plan?

9 A. That's correct.

10 Q. And so in reference to the reason why they
11 were going to do that -- and again, I don't want
12 names of people -- was there more than one reason
13 that Carlos Herrera had a hit out on him?

14 A. There was a variety of reasons.

15 Q. Okay. And did some of those reasons
16 include the fact that his mom and brother were
17 interviewed by law enforcement?

18 A. Yes, ma'am.

19 Q. In addition to some of his recordings?

20 A. That's correct.

21 Q. All right. And because of that, then --
22 and just so that we're clear, I believe you've
23 indicated that your position is that of a soldier,
24 or was of a soldier?

25 A. At the time of the Molina?

1 Q. Yes. Well, the time of this incident, the
2 incident that you're talking about was while this
3 case was pending, "this case" being the federal
4 prosecution; correct?

5 A. Yes.

6 Q. During that time, was it somebody else,
7 not you, that came up with the plan to hit Carlos
8 Herrera?

9 A. At that time I was already --

10 Q. Go ahead.

11 A. A high-ranking SNM member.

12 Q. And why was that?

13 A. Because a lot of the individuals that were
14 leaders got sent out of state, and they weren't
15 there to be voted in, or they needed some guidance.

16 Q. Okay. So was this after the Molina?

17 A. It was after the Molina.

18 Q. Okay. Did doing Molina elevate you?

19 A. Yes.

20 Q. When this plan happened, was it other
21 people that came up with the plan?

22 A. Yes, ma'am.

23 Q. Not you?

24 A. Yes, ma'am.

25 Q. Then you went to law enforcement with

1 this?

2 A. I did.

3 Q. Now, speaking of that, the first time that
4 you went, that you agreed to -- or I should say when
5 you decided to cooperate, you indicated previously
6 that was on October 24; is that correct?

7 A. That's correct.

8 Q. Of just last year?

9 A. That's correct.

10 Q. And when you came to court, you were not
11 expecting to testify; correct?

12 A. No, ma'am.

13 Q. To cooperate?

14 A. No, ma'am.

15 Q. And at the end of that meeting, that
16 initial meeting where after you had decided to
17 cooperate, what did you do voluntarily?

18 A. I turned over weapons. I gave the
19 reporting officer information and signed a Kastigar
20 letter.

21 Q. So you had come to court with a shank; is
22 that right?

23 A. Two of them.

24 Q. And nobody knew you had a shank; correct?

25 A. That's correct.

1 Q. But you voluntarily gave that up?

2 A. That's correct.

3 MR. VILLA: Leading.

4 THE COURT: Overruled.

5 BY MS. ARMIJO:

6 Q. Now, in reference to that, I believe you
7 were asked questions.

8 MS. ARMIJO: And Your Honor, may we
9 approach on this?

10 THE COURT: You may.

11 (The following proceedings were held at
12 the bench.)

13 MS. ARMIJO: Your Honor, I believe
14 yesterday when the witness was cross-examined, the
15 witnessed indicated that there was -- one of the
16 reasons he was starting to explain why he cooperated
17 was the fact that -- I believe he would say he
18 wasn't allowed to finish. But the fact he felt when
19 he was going to trial that he was being used
20 basically as a guinea pig. My words, not his.

21 The defense objected at that point, saying
22 they felt it went into a joint defense agreement.
23 However, through the course of probably a full day
24 of cross-examination, at least several hours, the
25 defense has on and on indicated that he had other

1 motives to cooperate, have questioned him, have
2 indicated, on and on, giving other reasons as to his
3 cooperation. So I think I should be allowed to
4 fairly ask the open-ended question about all the
5 reasons he decided to cooperate on that day on the
6 eve of trial.

7 THE COURT: What is it?

8 MR. MAYNARD: They're reading the
9 real-time on the prosecution counsel table.

10 THE COURT: Block it, Mr. Beck.

11 All right. Let me ask a few questions.
12 What is it that you want the witness to say? What
13 is it that you want to add to the dialogue of
14 reasons? Is there a way that we can get what you
15 need without getting to this joint privilege?

16 MS. ARMIJO: I guess I can ask him leading
17 questions as to -- but I think he has a right to be
18 able to fully explain why he made this decision,
19 given all the --

20 THE COURT: I want to be a little
21 protective of other defendants here and not have him
22 sort of waive the privilege. But if you could frame
23 what you want him to say, what would you have him
24 say? What is it that you want him to say?

25 MS. ARMIJO: I believe what he was going

1 to say before he was cut off -- and I have not
2 spoken to him -- I don't know, I didn't ask him,
3 "Hey, what were you going to say" -- what he was
4 going to say, and again, I believe this was on
5 cross-examination, he was going to say that he felt
6 like he was going to be -- what did he say? He felt
7 like he was going to be used as a test to see how
8 things would play out; that people would get to see
9 the Government's evidence, kind of a test case for
10 our evidence, and gang experts and things like that.
11 That's what I would anticipate him saying. Again, I
12 haven't spoken to him, but he was cut off.

13 THE COURT: How would that invade any sort
14 of joint privilege?

15 MR. LOWRY: Well, Your Honor, even having
16 this conversation would invade the joint privilege,
17 in my view. But I can tell you, well, I think if we
18 really want to go down this path, we need to have a
19 hearing outside the presence of the jury, because I
20 feel strongly that that witness would be very close,
21 if not perjuring himself, if he would say that.

22 THE COURT: How am I going to make that
23 determination?

24 MR. LOWRY: Because it was said in the
25 context of a privileged setting.

1 (To Mr. Hernandez.)

2 THE COURT: Mr. Hernandez.

3 (At the bench.)

4 I want him to come up if we're talking
5 about perjury of a witness here. I want to get his
6 attorney involved.

7 MS. JACKS: Asking about joint defense has
8 to be outside the presence of the Government or else
9 we'll waive it.

10 THE COURT: I'm not seeing how this waives
11 any sort of privilege.

12 MS. JACKS: I'm not understanding what the
13 Court is saying. You don't understand how that
14 could be privileged? How that concept, if it's
15 true, could be privileged? Is that what you're
16 saying?

17 THE COURT: I don't understand how him
18 saying "I felt like I was a guinea pig" --

19 MS. JACKS: Let's just suppose that there
20 was a meeting with defendants and their lawyers in
21 which that topic was discussed, and that was in a
22 meeting that was pursuant to a joint defense
23 agreement, providing that defense in that situation
24 could communicate freely, as if they were
25 communicating with their own lawyer, under the joint

1 defense privilege.

2 THE COURT: People still get to say they
3 feel like they're getting railroaded by the rest of
4 the defendants if it's discussed at a meeting. I
5 don't think it waives the privilege. If he feels
6 like he was, you know, going to be used and set up,
7 he has a right to say that. I'm just not seeing the
8 problem, if he wants to testify as to why he wanted
9 out.

10 MR. VILLA: Your Honor, if he feels that
11 way, that's fine. But his discussions about feeling
12 that way arose -- without getting into all of the
13 details -- arose under the joint defense privilege.
14 The other thing, the things he's going to say are
15 going to be contradicted by other people that we
16 might have to call that were present for that
17 meeting, including his attorney. I don't want to
18 get into that situation.

19 THE COURT: I don't want to get into it
20 either, but I'm not following on this. This seems
21 to me just kind of specious talk, really.

22 MR. VILLA: It's not.

23 THE COURT: Y'all have been asking him
24 repeatedly why he pled guilty. He gets to tell why
25 he pled guilty. He feels like the rest of the

1 defendants are using him. That's one of the
2 reasons.

3 They think he's going to commit perjury
4 here if he's asked why he was going to -- why he
5 pled guilty, because Ms. Armijo thinks he's going to
6 say that he was -- he felt like he was a guinea pig,
7 and that they were just going to use him to try the
8 case and see what the Government's evidence is.

9 I don't know what he's going to say. But
10 do you see him committing any perjury if he gives
11 that answer in response that question: Why did you
12 plead guilty?

13 MR. HERNANDEZ: I don't, Your Honor,
14 because he has two cases and he was going to trial
15 on the first one initially. So he was indicted
16 on -- what is it -- 4269 and 4268, and he was queued
17 up before Your Honor November 6, I believe. And so
18 I think, given that situation, I think that was part
19 of his response that he thought that they were using
20 him.

21 THE COURT: Do you feel if he testifies
22 that way, he's breaking any sort of joint privilege
23 by testifying that way?

24 MR. HERNANDEZ: No, Your Honor. No. I
25 don't see how. Because nothing -- the few times or

1 the one time I think that we -- I don't think there
2 is any information that he is going against by
3 testifying that way. But if it's going to be an
4 issue, I would like to review the agreement just to
5 make sure that there is not an issue.

6 THE COURT: Do you have a copy of the
7 agreement?

8 MR. HERNANDEZ: I don't believe I have it
9 with me. I'm sure I can get one.

10 THE COURT: Do y'all have a copy?

11 MR. VILLA: I think I might have one. But
12 Your Honor, I'm representing to you that his
13 testimony about that came within the context of a
14 joint defense meeting. That's privileged. And
15 there is going to be information that contradicts
16 him that comes from that. And I have other issues
17 with -- I mean, I don't know how to say this, but
18 subsequent breaches of that J.D. agreement by Mr.
19 Rodriguez and Mr. Hernandez. And you know, I
20 question Mr. Hernandez' view about whether this
21 violates the joint defense agreement. We don't want
22 to dive down this rabbit hole of having to get into
23 what those other issues are. I think it's best to
24 leave that information out. It's also misleading
25 because it was the Government that had 4269, even

1 though it's a higher case number, going ahead of
2 4268. In terms of the trial order, that was beyond
3 our control.

4 MR. CASTELLANO: The problem is, they're
5 trying to paint Mr. Rodriguez into a corner, and
6 using the agreement as a sword and shield. He pled
7 guilty and now he's stuck.

8 THE COURT: I know Ms. Armijo is doing the
9 questioning. If you were to lead him, what
10 questions would you ask?

11 MR. CASTELLANO: I would say: Among other
12 reasons that you've already told us, isn't it true
13 that you felt, since you were by yourself, you were
14 going to be the test case, or you would go to trial
15 and everyone else didn't --

16 THE COURT: I think that question is
17 proper.

18 MR. CASTELLANO: -- in these proceedings
19 and get a view of what the witnesses would say,
20 and --

21 THE COURT: I'm going to allow the
22 question.

23 MR. CASTELLANO: And we don't even see it,
24 but would the Court be willing to review the joint
25 defense agreement?

1 THE COURT: If they want me to see it. I
2 just don't think that this violates any sort of
3 joint defense. I think you get a right to discuss
4 it, but I don't think that means that evidence is
5 not permissible at trial.

6 MR. CASTELLANO: I would ask the Court to
7 review the agreement. We don't know anything about
8 it. If the Court needs to understand the
9 parameters, I would ask the Court to review it.

10 THE COURT: I'll look it at. If you limit
11 it to that question, that will be acceptable.

12 MS. DUNCAN: I was having trouble hearing,
13 so I may have to repeat some stuff. It was up to
14 the Government to decide who went first, and they
15 decided 4269 went first. So in terms of it being a
16 test case, that was the Government's decision. And
17 any conversations about whether the defendants were
18 looking forward to 4269 --

19 THE COURT: Can you leave out the words
20 "test case." Can you think of another way to phrase
21 it?

22 MR. CASTELLANO: In other words, he could
23 be asked, "You were going to trial by yourself. Any
24 other defense attorney could come in and watch your
25 case and get a preview of what the witnesses might

1 say. And that potentially could aid them in their
2 cases."

3 THE COURT: Why don't you go ahead and
4 just ask him an open-ended question about why he did
5 it, and I think, by leading, probably characterizing
6 it in a way that --

7 MR. LOWRY: I don't want to belabor this
8 bench conference, but Mr. Baca didn't raise this
9 issue, and now we're stuck with, you know, the
10 flotsam of the decision of a co-defendant to go
11 forward. If this kind of prejudicial information is
12 going to come in against Mr. Baca, I'm going to have
13 to move for a mistrial. I know you don't want to
14 hear that yet again. But this is unfair and limits
15 his rights to a fair trial.

16 THE COURT: All right. Let's go ask the
17 question.

18 (The following proceedings were held in
19 open court.)

20 THE COURT: All right, Ms. Armijo.

21 BY MS. ARMIJO:

22 Q. Mr. Rodriguez, yesterday you were asked a
23 question about why you decided to cooperate right
24 before going to trial in your other case. And I'm
25 going to ask you a couple of questions about that.

1 Now, first off, as the plea agreement
2 indicates, you had another case that was pending
3 trial; is that correct?

4 A. Other than the one I was going for that
5 day?

6 Q. No. I mean other than the one that you
7 were -- let me back up. You were indicted in two
8 separate cases; correct?

9 A. That's correct.

10 Q. And I believe we've talked about how you
11 went to trial or you went to court on October 24 to
12 another case that doesn't involve these defendants
13 here; correct?

14 A. That's correct.

15 Q. And in that case there were at least three
16 other people that were indicted with you that had
17 pled guilty, and you were the only one left;
18 correct?

19 A. That's correct.

20 Q. Okay. And I believe you had started to
21 say something yesterday as far as what was your --
22 why you decided to cooperate at that point in time
23 when you were getting ready to go to trial. Do you
24 recall that?

25 A. As to why?

1 Q. Yes. Was there a reason why you decided
2 to cooperate then, when you were getting ready to go
3 to trial by yourself?

4 A. There was a point in time where Mauricio
5 Varela took a plea, he was no longer coming to court
6 with me, and I just wanted out.

7 Q. Okay. And if you went to trial, you were
8 going to be going to trial alone?

9 A. In that case, yes.

10 Q. Okay. And did you have a feeling -- and
11 this is your own feelings -- did you have a feeling
12 as to whether or not that trial was going to be used
13 as a test for what the Government's evidence was?

14 A. Yes. It was going to be a test run to see
15 how the Government approached the next cases, the
16 next VICAR cases, and it was a test run at my
17 expense.

18 Q. And did you like that?

19 A. I did not like that.

20 Q. Did that come into play in your decision
21 to possibly cooperate?

22 A. That, and that the other defendants
23 thought it was funny, and that it was a test run
24 saying, "Okay, you're just going to get 30 years.
25 That's okay."

1 I'm like, "I'm on in-house parole. You
2 guys are doing life sentences, you know."

3 Q. When you say "in-house parole," what is it
4 that you mean?

5 A. It means my state time was complete.

6 Q. So if -- other than this case, could you
7 have been out on the streets?

8 A. I would have been out on the streets, yes.

9 Q. Now you were also asked about -- I believe
10 Mr. Lowry was asking you questions about your
11 conversation with Mr. Baca this morning, and I
12 believe you had indicated that Mr. Baca had told you
13 he wanted to kill Jeffrey Madrid?

14 A. Yes.

15 Q. Okay. Can you explain that?

16 A. He was in the hole, in segregation in the
17 Southern correctional facility, and he believed that
18 he was in there.

19 Q. Who is "he"?

20 A. Pup, Anthony Baca.

21 Q. Okay.

22 A. He was in the hole, what he told me later
23 after the fact.

24 Q. What's the hole?

25 A. The hole is where you get in trouble, they

1 send you to solitary confinement. It's a temporary
2 housing for disciplinary reasons and CI material.
3 Someone drops a kite on you, CI material, your life
4 is in danger, you're put into the hole for the
5 investigation process to see if the CI is credible,
6 reliable.

7 Q. And without getting into what Mr. Baca
8 told you as far as his beliefs, did he tell you
9 whether or not -- something in reference to Jeffrey
10 Madrid?

11 A. Yes, that he asked another inmate to
12 provide another SNM member with a weapon and to
13 proceed to stab Jeffrey Madrid.

14 Q. Now, Mr. Lowry also talked to you about
15 politics. And within the SNM, are there politics
16 within the SNM?

17 A. Yes, ma'am.

18 Q. Does that make it a different
19 organization, or is it still one organization?

20 A. It's just one organization.

21 Q. Now you also were asked, I believe by
22 Ms. Jacks but it could have been one of the other
23 attorneys, about how many people were left in
24 reference to this case that you actually had an
25 opportunity to testify against. Do you recall that?

1 A. Yes, ma'am.

2 Q. Okay. Other than the four people that we
3 have here in court today, are there still other
4 defendants pending trial?

5 A. There are, yes, ma'am.

6 Q. Are there numerous cases that are still
7 pending trial?

8 A. I believe there are.

9 Q. Mr. Lowry also talked to you about your
10 conversation with Mr. Baca in reference to the
11 Javier Molina incident.

12 A. Yes, ma'am.

13 Q. Do you recall that line of questioning?

14 A. While we were in the yard?

15 Q. Yes. In October of 2015.

16 A. Yes, ma'am.

17 Q. Did Mr. Baca also tell you that they had
18 done the right thing by hitting and killing Molina?

19 A. Yes, ma'am.

20 Q. And the Esparza incident that we saw the
21 video on. Now, I believe you were trying to explain
22 how that incident was related to SNM this morning.
23 Could you tell us how that's related to SNM?

24 A. How that incident is related to the SNM?

25 Q. Yes.

1 A. Well, I was an SNM member at the time.
2 That was 2008. So I got involved in the SNM in
3 2005, 2006. That's three years. And the SNM -- you
4 ain't really a verified SNM member until you spill
5 blood. And that was an issue that I thrived for. I
6 wanted to show my big homies that I was going to do
7 the violent acts and commit these acts of violence
8 for the SNM, and as well as for myself.

9 And when you commit these violent acts for
10 yourself and for the SNM, you're looked up to and
11 you're on your way up the ranks, and it's proving
12 moments. And the guy burned me as an SNM member.
13 He was going to make the SNM look weak as a whole,
14 and I went after him for that.

15 Q. I guess that's part of the next question
16 that I have. Are certain acts done for personal
17 reason but also for SNM?

18 A. Yes, ma'am.

19 Q. And was that an example of one of them?

20 A. The SNM is the top of the New Mexico gang
21 world. As an individual coming up in the gang
22 world, you want to commit these acts of violence to
23 get the eye of the SNM. And if you're not a member,
24 if you are a member, and you take it upon yourself
25 to go out of the ordinary against these guys and not

1 use other SNMers for your dirty laundry. If I have
2 an issue with someone outside SNM, it's my
3 responsibility to take it upon myself and assault
4 them or resolve it in a matter I feel fit.

5 The SNM doesn't necessarily have to tell
6 me to go after these individuals like that. And
7 when you are a member like that, a made member of
8 the SNM, it makes my street gang go up in value. It
9 makes the people that I associate go up in value,
10 and you want that. You want to prove that they can
11 rely on you for anything.

12 Q. Now, lastly, I believe Ms. Jacks went over
13 portions of the writings that you sent to Keith
14 Johnston. Do you recall that?

15 A. Yes, ma'am.

16 Q. When did you write those, approximately?

17 A. 2011 through the last two and a half years
18 I did after the Sosoya case. I met Mr. Keith
19 Johnson while I was on my 60-day segregation for
20 that incident.

21 Q. And that incident happened in 2011 with
22 Mr. Sosoya?

23 A. Yes.

24 Q. So is everything that he has from the time
25 period of 2011?

1 A. It's from 2011 until I got out of solitary
2 confinement to the South facility in 2013.

3 Q. Okay.

4 A. It was a process. I was attempting to get
5 my GED. And I wrote an essay, and I began a
6 friendship with him based on my writing.

7 Q. And you said you did it as part of
8 obtaining your GED?

9 A. They asked me if I could write, and I
10 said, "I'll try it."

11 They said, "Let's see how you write on an
12 essay."

13 I wrote an essay about who you would like
14 to be for a year if you could be anyone in the
15 world, who would you would want to be for one year.
16 I wrote about a hippie named Dev. I made up a
17 character from someplace in North Dakota, and I got
18 a lot of reviews, and the teacher started to come
19 see me at my house.

20 Q. Did you end up getting your GED?

21 A. I did, twice.

22 Q. Now, was Ms. Jacks -- I believe the last
23 thing that she was asking you about is, she took a
24 line that you said that you wrote about
25 relationships.

1 A. That's correct.

2 Q. Okay. What relationships were you
3 referring to in that?

4 A. To my son's mother and my son.

5 Q. Did that have anything to do with SNM?

6 A. No.

7 Q. Or anything else?

8 A. It had to do with me and my solitary
9 confinement time and my two phone calls a month and
10 how I was trying to begin a more in-depth
11 relationship with them. And I didn't think they
12 were taking the two calls a month very seriously,
13 and I wasn't getting nothing out of the
14 relationships; and rather than being hurt, I would
15 just like nothing to do with them. It was causing a
16 lot of pain that I couldn't get them to open up as I
17 was trying to open up.

18 MS. ARMIJO: May I just have a moment,
19 Your Honor?

20 THE COURT: You may.

21 BY MS. ARMIJO:

22 Q. You were also asked if you wrote a letter
23 for Mr. Armenta. Do you recall that?

24 A. Yes, I recall the question.

25 Q. Did you write a letter for Mr. Armenta?

1 A. No, I did not.

2 Q. Did you ever have a conversation with him
3 about accepting responsibility?

4 A. I don't think I did, no.

5 Q. All right.

6 MS. ARMIJO: And Your Honor, at this time
7 the United States would move into admission
8 Government's Exhibit 755.

9 THE COURT: Any objection? I think that's
10 the chart, a continuation of the chart.

11 MR. LOWRY: We'd ask for a limiting
12 instruction for the statements of --

13 THE COURT: Ms. Armijo I think was careful
14 on a couple of statements to limit those to certain
15 individuals. So when you look at the chart, you'll
16 see their initials. Those are the only ones that
17 you can use them against. That's the way it was
18 written. Right, Ms. Armijo?

19 MS. ARMIJO: Yes, Your Honor.

20 THE COURT: The rest of them can be used
21 against all the defendants, but those other ones are
22 only to be used against the defendant with the
23 initials there.

24 Not hearing any objection, the Court will
25 admit Government's Exhibit 755.

1 (Government Exhibit 755 admitted.)

2 BY MS. ARMIJO:

3 Q. And did you at any point in time that you
4 recall tell Mr. Armenta to accept responsibility for
5 other people or for himself or anything, if you
6 recall? And if you don't recall, that's fine.

7 A. I think I -- when there was a point in
8 time where I told him he was going to take the rap.
9 I think there was a point of time, something like
10 that. And then Jerry Armenta and Timothy Martinez
11 went along with whatever they were going to do.

12 Q. Were you really a part of that?

13 A. I was not.

14 MS. ARMIJO: Nothing further. Thank you.

15 THE COURT: Thank you, Ms. Armijo.

16 Ms. Jacks, did you want to recross?

17 MS. JACKS: I do, but since I went last, I
18 probably should go last on recross.

19 THE COURT: All right. Mr. Villa.

20 MR. VILLA: Yes, Your Honor.

21 THE COURT: Mr. Villa.

22 RECROSS-EXAMINATION

23 BY MR. VILLA:

24 Q. Good afternoon, Mr. Rodriguez.

25 A. Good afternoon.

1 Q. So the statement, Number 14, the
2 conversation that you had with Mr. Perez about this
3 not being his first rodeo -- do you remember that?

4 A. Yes.

5 Q. I think you recall from yesterday your
6 testimony was that you had only been in the blue pod
7 with Mr. Perez for about three months before Molina
8 happened; right?

9 A. That's correct.

10 Q. Before that, you'd never met him before?

11 A. That's correct.

12 Q. So you don't know whether he'd been in
13 situations in a pod where somebody had been hurt or
14 killed and they had cleared the whole pod out?

15 A. Yes.

16 Q. You don't know that?

17 A. Yes, I do know. Well, not in the state of
18 New Mexico, no.

19 Q. But for Mr. Perez?

20 A. Yes.

21 Q. I mean, you haven't been with him when a
22 pod got cleared out in other situations?

23 A. No.

24 Q. And you agree with me that when you get
25 cleared out of the pod, they're moving you to a

1 whole different pod; right?

2 A. It's not very common.

3 Q. I understand that.

4 A. Right.

5 Q. But when it happens -- and it happened in
6 this case -- they moved everybody out of the pod;
7 right?

8 A. Yeah. I didn't know at the time. I
9 thought just myself and Armenta was moved out.

10 Q. You didn't realize that everybody had
11 been --

12 A. No, I did not know.

13 Q. When you get moved to a new pod, you don't
14 have any of your stuff?

15 A. That's correct.

16 Q. You don't have your clothes or your TV or
17 anything like that?

18 A. That's correct.

19 Q. Now, going back to the statement -- let's
20 see here. On Government's Exhibit 755, Number 4, on
21 the first page when you're in Mr. Perez' room,
22 taking the piece from the walker, and Mr. Perez
23 says, "I'm down for whatever as long as it's not
24 me"; right?

25 A. Right.

1 Q. And you told Agent Stemo, did you not,
2 that you understood Mr. Perez to mean that he did
3 not want to be hurt and would go along with the hit
4 if he did not otherwise have to be involved?

5 A. Yes. That was my assumption.

6 Q. That's what you understood from that
7 statement?

8 A. From that statement, that's what I assumed
9 he meant.

10 MR. VILLA: May I have a moment?

11 THE COURT: You may.

12 MR. VILLA: No further questions, Your
13 Honor.

14 THE COURT: Thank you, Mr. Villa.

15 Ms. Bhalla.

16 MS. BHALLA: Thank you, Your Honor.

17 RECROSS-EXAMINATION

18 BY MS. BHALLA:

19 Q. Mr. Rodriguez, Ms. Armijo asked you about
20 the plot or the plan on my client's life; is that
21 correct?

22 A. Yes, she did.

23 Q. You were going to participate in that
24 plan, weren't you?

25 A. Partly, yes.

1 Q. Yes. And you described yourself as a
2 leader at the time, didn't you?

3 A. I was a high-ranking member at the time.

4 Q. And you testified, I believe recently,
5 that the reason -- part of the reason that you
6 stabbed Mr. Esparza was that he had burned you; is
7 that right?

8 A. That's correct.

9 Q. And you believe that Carlos Herrera burned
10 you, didn't he?

11 A. No.

12 Q. Do you recall explaining to Ronald Sanchez
13 in that meeting that Carlos Herrera had called you a
14 bitch?

15 A. I don't think he called me a bitch in the
16 meeting. In the wiretap, right, I remember him
17 saying that, that he called me a bitch, yes.

18 Q. And you explained to Ronald Sanchez that
19 he called you a punk?

20 A. No, I don't recall that.

21 Q. Would you like to take a look at the
22 transcript?

23 A. Yeah, I would, yes.

24 MS. ARMIJO: May we have a page?

25 MS. BHALLA: May I approach, Your Honor?

1 THE COURT: You may.

2 BY MS. BHALLA:

3 Q. Can you read that?

4 A. "Blue ain't worth a fuck. He's a bitch,
5 this and that."

6 Q. And that's what you told to Ronald
7 Sanchez; is that correct?

8 A. Yes. It has nothing do with a punk.

9 Q. Okay. And you also spoke with Agent Acee
10 on November 1st; is that correct?

11 A. That's correct.

12 Q. And you explained to Agent Acee that you
13 felt like Carlos was elevating himself to somebody
14 that he really wasn't. Is that fair to say?

15 A. In the audio with Billy Cordova, yes.

16 Q. And he was taking credit for things he
17 hadn't done; is that right?

18 A. That's correct.

19 Q. And that would be the Molina murder;
20 right?

21 A. No.

22 Q. No. Okay. And you explained to Agent
23 Acee that the information on the tablet highlighted
24 everything; is that correct?

25 A. The information on the tablet highlighted

1 everything as far as what?

2 Q. About why Carlos Herrera needed to be
3 murdered.

4 A. Oh, yes, about --

5 Q. That's just a yes-or-no question.

6 A. Yes.

7 Q. Thank you. And you also explained to
8 Agent Acee that the recording popped up and he was
9 talking shit about Arturo Garcia; correct?

10 A. That's correct.

11 Q. And you also explained to Agent Acee that
12 you were angry with Carlos because he received some
13 paperwork regarding an inmate named Peter Stevens;
14 is that correct?

15 A. That's correct.

16 Q. And he had it thrown away, didn't he?

17 A. Someone else threw it away. He gave it to
18 another individual, and that individual threw it
19 away.

20 Q. Do you recall actually correcting this 302
21 for Mr. Acee?

22 A. May I see it?

23 Q. This report? Yeah, you can.

24 MS. BHALLA: Your Honor, may I approach?
25 I'm approaching with Bates No. 51516.

1 THE COURT: You may.

2 BY MS. BHALLA:

3 Q. Mr. Rodriguez, I'm going to refer you to
4 the note that you wrote right here. Take a second
5 to read that.

6 A. (Witness complies.) Which part do you
7 want me to take notice to? That has nothing do with
8 paperwork.

9 Q. Right here.

10 A. Okay. Yes.

11 Q. Those are your notes?

12 A. Those are my notes.

13 Q. And those notes indicate that Carlos
14 Herrera had the paperwork thrown away; is that
15 correct?

16 A. As well as the other individuals involved.

17 Q. And that was part of the reason that you
18 wanted to participate in the murder of Carlos
19 Herrera; is that correct?

20 A. No, that was far before the plot to kill
21 Carlos Herrera.

22 Q. That was far before the plot? It was part
23 of the reasons?

24 A. Yes.

25 Q. Okay. And you had told Agent Acee that

1 Carlos didn't do anything, didn't you?

2 A. He wasn't in the pod.

3 Q. And that he couldn't even do a burpee. I
4 think that that's what you told Mr. Ronald Sanchez.
5 Is that fair to say?

6 A. I don't recall that.

7 Q. Would you like to look at that transcript?

8 A. Yes, ma'am.

9 Q. You'll have to give me just a minute.
10 I think that Mr. Villa asked you some
11 questions about that, and you said that -- you said
12 some of the older guys were fat; right?

13 A. Out of shape?

14 Q. Yes.

15 A. A few of them.

16 Q. Yep, here we go. I'm going to direct you
17 to page 24.

18 A. This is the Ronald Sanchez interview?

19 Q. Yes.

20 A. Oh, yeah. About the hypochondriac?

21 Q. Isn't it true that you told everybody that
22 Carlos Herrera couldn't do a burpee?

23 A. Not everybody, no.

24 Q. Well, whoever was in that meeting?

25 A. Ronald Sanchez, yes.

1 Q. Okay. And that doesn't make him a very
2 good SNM member, does it, in your mind?

3 A. Everyone is good for something.

4 Q. Is that why they call him Lazy?

5 A. There you go. You hit it on the head,
6 right there.

7 MS. BHALLA: Thank you. Nothing further.

8 THE COURT: Thank you, Ms. Bhalla.

9 Mr. Lowry, do you have recross of Mr.
10 Rodriguez?

11 MR. LOWRY: Briefly, Your Honor.

12 THE COURT: Mr. Lowry.

13 RECROSS-EXAMINATION

14 BY MR. LOWRY:

15 Q. Mr. Rodriguez, again, this has been a
16 companion of yours for a couple of years.

17 A. Yes, sir.

18 Q. And through your study of the discovery
19 and all the documents in this case, you knew exactly
20 where and when everybody was being recorded.

21 A. Through the discovery?

22 Q. Correct.

23 A. Yes.

24 Q. You knew, when you were in the cell next
25 to Mr. Baca, you were being recorded?

1 A. I did not know. At the time? At the time
2 or after?

3 Q. Yeah.

4 A. When I hit the button? Yes.

5 Q. So when you gave your statements on the
6 3rd that you had a conversation with Mr. Baca in the
7 rec yard, you knew exactly where a microphone
8 wasn't.

9 A. There was microphones present. Rookie
10 Year was filming it.

11 Q. Well, the microphones that were used by
12 the confidential informants in this case?

13 A. After reviewing the discovery?

14 Q. Yeah.

15 A. Ask me the question again.

16 Q. Sure. You knew that when you were in your
17 cell talking to Mr. Baca, there was an individual
18 recording both of you.

19 A. After the fact.

20 Q. Correct.

21 A. Yes.

22 Q. So after the fact, you knew exactly where
23 to place yourself if you wanted to have a
24 conversation, in theory, that implicated Mr. Baca?

25 A. Are you saying that -- what are you

1 saying?

2 Q. I'm saying you knew where the microphones
3 were in the institution, on February 3, 2018?

4 A. No, I didn't -- oh, after the fact? We're
5 talking about after the fact, the discovery?

6 Q. On February 3, 2018, you knew where the
7 microphones were inside the facility; correct?

8 A. Correct.

9 MR. LOWRY: No further questions, Your
10 Honor.

11 THE COURT: Thank you, Mr. Lowry.
12 Ms. Jacks, do you have recross?

13 MS. JACKS: Just a little bit.

14 THE COURT: Ms. Jacks.

15 RECCROSS-EXAMINATION

16 BY MS. JACKS:

17 Q. Mr. Rodriguez, I just want to ask you a
18 couple of questions, to start off with, on
19 Government's Exhibit 755.

20 A. Okay.

21 Q. And that's sort of the enhanced timeline
22 where you added some things with Ms. Armijo.

23 A. Right. Okay.

24 Q. First of all, let's see, I want to direct
25 you to the first -- well, the first entry in red for

1 March 7, 2014. So this is referencing the
2 conversation that you say that you had on the way to
3 the yard through the door of yellow pod.

4 A. In the sally port, yes.

5 Q. Well, you're in the sally port, and I
6 guess you're saying that you spoke to Mr. Herrera in
7 that conversation; right?

8 A. Through the door, yes.

9 Q. I thought -- and maybe I'm wrong -- but I
10 thought that the testimony was that you had asked
11 Mr. Herrera about paperwork and he responded
12 regarding something about a syringe?

13 A. No.

14 Q. Okay.

15 A. I'll verify -- I'll clarify it. When I
16 asked him, "Ask Lupe if he has that," he thought I
17 was talking about the syringe. He goes, "Yeah,
18 yeah, yeah, he has it."

19 "No, not that. The paperwork."

20 Then he went back. He didn't know what I
21 was talking about when I asked him. So he went back
22 and talked to Lupe. Lupe was shaking his head and
23 he came back to the door, and he said, "Yeah, he has
24 that".

25 Q. Let me see if I can ask this properly. So

1 when you first said: "Do you have that," Mr.
2 Herrera thought "that" referred to a syringe?

3 A. Yes, because I had asked Lupe Urquizo
4 earlier the day that he showed up to the emergency
5 door, if he had still had a syringe.

6 Q. And so according to you, people knew that
7 you were interested in obtaining a syringe.

8 A. There was only one syringe in the unit, so
9 everyone was --

10 Q. Okay. So what was the syringe being used
11 for?

12 A. Suboxone.

13 Q. Injecting Suboxone intravenously?

14 A. Yes, ma'am.

15 Q. And I want to ask you about this entry
16 here. So I'm on page 2, and I'm on the Red
17 statement, Number 8.

18 A. Okay.

19 Q. I'll just give you a chance to orient
20 yourself. This is something I may have
21 misunderstood, and I want to clear it up. So it was
22 my understanding that your testimony was that you
23 made shanks and that you made them while the rest of
24 the unit was at the phone yard.

25 A. No, I began breaking them down. I

1 sharpened them during count.

2 Q. So you were continuing -- let's just see
3 if we can come to an understanding. You began --
4 your testimony is you began to make shanks while the
5 rest of the pod was at phone yard, and you completed
6 them while you were locked down for count.

7 A. That's correct.

8 Q. All right. I'm going to move to a new
9 topic. Ms. Armijo asked you some questions on
10 redirect about Mr. Sanchez' reaction when you say
11 that you and he looked at the paperwork. Do you
12 recall those questions?

13 A. I recall.

14 Q. And I think what you testified was he said
15 something like, "It's done"?

16 A. Yes.

17 Q. On January 2, 2018, when you were being
18 interviewed by Ms. Armijo and members of the FBI
19 just prior to trial, this was the visit or the
20 interview I think you forgot, and you thought you
21 were coming to testify, and it was just an
22 interview?

23 A. What's the date of it?

24 Q. January 22, 2018.

25 A. Yeah. Okay.

1 Q. Did you tell the Government during that
2 interview that when Mr. Sanchez saw the paperwork,
3 he wanted to hold off on the hit?

4 A. I think it was about the visit prior to
5 it. Remember, I told you he was talking about the
6 visit at the door. Then Lazy says, "Just get it
7 done." That's what that comment has in reference
8 to.

9 Q. So the answer to my question was, then,
10 that you did tell the Government that?

11 A. I did, yes.

12 Q. And Ms. Armijo asked you some questions
13 about a conversation that you had or that you're
14 saying that you had with Mr. Sanchez after you spoke
15 with Timothy Martinez. She asked you some questions
16 just a few minutes ago, and you talked about, "Oh,
17 yeah, I came back and talked to Mr. Sanchez at the
18 table"; right?

19 A. Right.

20 Q. And you said that what you were talking to
21 him about at that point was that there was a change
22 in plans.

23 A. That's correct.

24 Q. Okay. Have you previously talked to the
25 Government about what that conversation was with Mr.

1 Sanchez at the table? And specifically I'm
2 referring to that conversation that you see on the
3 videotape.

4 A. I'm telling him that Timothy is going to
5 choke him out.

6 Q. That's what your testimony is today.

7 A. That's correct.

8 Q. Right. But did you previously tell the
9 Government something different about that
10 conversation?

11 A. I don't recall.

12 Q. Did you tell the Government on October 24,
13 2017, that you met up briefly at the pod tables to
14 discuss setting up a spread?

15 A. Not at that time, no. That wasn't what
16 that conversation was about.

17 Q. On the video that encompasses the Molina
18 assault, you've watched that; right?

19 A. Yes.

20 Q. And during that video, is Mr. Sanchez
21 setting up what's called "a spread"?

22 A. No.

23 Q. Are you sure?

24 A. What is your reference to a spread?

25 Q. Getting ready to set up some food.

1 A. No.

2 Q. With other people at the pod table there?

3 A. There is no food on the table.

4 Q. Was he getting ready to set up a spread?

5 A. How would you get ready to set up a spread
6 in your description?

7 Q. I'm asking you.

8 A. No, he was not.

9 Q. Okay. You testified on redirect that
10 after Molina was assaulted, I think you said that
11 Mr. Sanchez yelled something through the top-tier
12 emergency door?

13 A. Yes, ma'am.

14 Q. Something along the lines of, "How do you
15 like that"?

16 A. "Baby."

17 Q. Okay, when you were interviewed by the
18 Government on October 24, 2017, did you tell them
19 anything about that?

20 A. I don't recall much about that day.

21 Q. Did you tell them anything about that on
22 November 1st of 2017?

23 A. November 1st with Acee?

24 Q. Right.

25 A. I would have to see the 302. I don't

1 know.

2 Q. Did you tell them anything about that on
3 December 12 of 2017?

4 A. Who was the interview with? Oh, with
5 Ronald Sanchez? That's the one with Ronald; right?

6 Q. Did you say anything during the interview
7 with Ronald?

8 A. No, ma'am.

9 Q. Did you say anything in the interview with
10 Task Force Officer Cupit and Captain Sapien on
11 December 12?

12 A. No, ma'am.

13 Q. When is the first time that you attributed
14 a comment like that to Mr. Sanchez?

15 A. It might have been either in the interview
16 with the prosecution people that I didn't recall or
17 the one on Saturday.

18 Q. Just recently?

19 A. Yes, ma'am.

20 Q. I just have a few questions about the
21 situation that you just talked about regarding sort
22 of the lead-up to your decision to become a
23 Government witness.

24 A. Okay.

25 THE COURT: Do you want to take this up

1 after our break?

2 MS. JACKS: Sure.

3 THE COURT: Let's be in recess for about
4 15 minutes. All rise.

5 (The jury left the courtroom.)

6 THE COURT: All right. We'll be in recess
7 for about 15 minutes.

8 (The Court stood in recess.)

9 THE COURT: All right. We'll go on the
10 record. Is there anything we need to discuss before
11 we bring the jury in, Ms. Armijo?

12 MS. ARMIJO: No, Your Honor.

13 THE COURT: How about from the defendants?
14 Anybody got anything?

15 MR. VILLA: No, Your Honor.

16 THE COURT: While we're waiting, I'm going
17 to add seven -- I think I talked to you about I need
18 names of the controlled substance in the
19 racketeering acts, but I also need to know what
20 witnesses are going to impeach other witnesses'
21 testimony through either reputation or opinion for
22 truthfulness. So both of you have -- no, I don't
23 think the Government did. I think it's the
24 defendants have that instruction. So if you're
25 going to use that, start giving me the names of the

1 people so I can put them in there.

2 MR. VILLA: Your Honor, do you want that
3 in the form of a pleading or an email?

4 THE COURT: You know, however you want to
5 get it to me. I'm just working on these
6 instructions. I'm going to try to give you a pretty
7 advanced set tomorrow. I doubt I'm going to master
8 these racketeering instructions by tomorrow, but the
9 rest of the framework I think will be pretty far
10 along.

11 Then if y'all start feeding me that, it
12 will save us a lot at the end, everybody trying to
13 recreate it. If you want to email it, I can file
14 it; or you can just send a letter. Whatever is
15 convenient.

16 MR. VILLA: Sounds good.

17 THE COURT: Remember, there are seven
18 categories now. There may be eight. I'll repeat
19 them tomorrow. I guess these have been judicial
20 suggestions up to this point, but they probably need
21 to become judicial directives at some point. But I
22 know y'all are busy. You've got a lot of stuff
23 going on.

24 MR. VILLA: We've just goofing off, Judge.

25 THE COURT: I never accused you of goofing

1 off, Mr. Villa.

2 Y'all have been a hard-working bunch.

3 I've enjoyed working with you. Good group.

4 (The jury entered the courtroom.)

5 THE COURT: All right. Everyone be
6 seated. I got permission from my wife to tell you
7 this story so I'm not going to be in trouble when I
8 go home.

9 But my wife had taken a new teaching job.
10 And she'd come from a private school where, if they
11 got up on a snow day, they just looked, and if it
12 was Albuquerque Public School, it was a snow day,
13 that private school took the day off.

14 The new school, on the other hand, never
15 had a snow day, but nobody told her. And so she
16 came in the next day and said, "Oh, wasn't it nice
17 to have a snow day." Everybody had to tell her they
18 didn't have a snow day.

19 I tell that story because if you get up in
20 the morning and you see the federal government is
21 shut down, you don't have a snow day. You've got to
22 come to work tomorrow. I'm going to give you the
23 information I have because I think you'll be
24 interested in it. But this is from James Duff, who
25 is our director of the Administrative Office of the

1 Courts out of Washington. This was sent on the 6th,
2 so it's actually two days old. But I've been
3 checking periodically during the day, and I'm not
4 sure they've reached an agreement now. So we're not
5 going to be together at midnight when the magic
6 occurs. But as far as the fiscal year 2018
7 continuing resolution extension, the current CR
8 expires at midnight this Thursday, February 8, 2018.
9 We're hopeful that Congress passes the six-week CR
10 extension through March 23, 2018. It is considering
11 this week to provide additional time to complete
12 work on fiscal year 2018 appropriations bill
13 including the judiciaries bill.

14 And then he puts in bold letters, "I
15 reiterate previous guidance that in the event a CR
16 extension is not enacted by midnight this Thursday,
17 most federal entities will have to implement
18 shutdown plans immediately. The judiciary, however,
19 will not shut down, and judiciary employees should
20 report to work as normal on Friday, February 9,
21 2018. Under a lapse in the appropriation scenario,
22 the judiciary would be able to sustain paid
23 operations through the use of our fee authority and
24 no year appropriations for approximately three
25 weeks, or through March 1, 2018. The judiciary has

1 sufficient fees and no year funding to cover
2 salaries and critical operating costs during such a
3 period, including costs incurred by the Supreme
4 Court, other national courts, the administrative
5 office, the federal judicial center, the US
6 sentencing guidelines, and federal defender
7 organizations, including community defender
8 organizations. Jury trials would continue and
9 jurors would be paid. Payments to Criminal Justice
10 Act panel attorneys can also continue subject to
11 available funding. If the CR extension is not
12 enacted, additional guidance for operating under a
13 lapse in appropriations will be provided early next
14 week."

15 And they're going to keep us updated on
16 the status of the fiscal year 2018 judiciary
17 appropriations. And I will keep you up, as well.
18 But I think we're in good shape to continue. So
19 whatever channels you watch and wherever you get
20 your news, if they tell you that the federal
21 government is shut down, Las Cruces Federal
22 Courthouse is not shut down. So come on back to
23 work, and we won't have a snow day tomorrow.

24 Okay. Thank you. You've been a good
25 bunch, and I appreciate it, and look forward to

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1 seeing you tomorrow.

2 All right. Mr. Rodriguez, I'll remind you
3 that you're still under oath.

4 THE WITNESS: Yes, sir.

5 THE COURT: Ms. Jacks, if you wish to
6 continue your recross, you may do so at this point.

7 BY MS. JACKS:

8 Q. Mr. Rodriguez, I just have one more line
9 of questioning for you, and that's in regards to the
10 situation surrounding your decision to become a
11 Government witness as it relates to your own trial.
12 And you were asked some questions about that by Ms.
13 Armijo, so I just have a few for you.

14 A. Okay.

15 Q. First of all, who sets the trial dates in
16 these cases?

17 A. I'm not aware.

18 Q. Judge Browning.

19 A. Oh, Judge Browning.

20 Q. And the Court sets trial dates at the
21 request of the Government, doesn't it? Or do you
22 know?

23 A. I do not know the procedures of it.

24 Q. Okay. Did the Court determine the order
25 in which the various cases would be tried?

1 A. I believe they did.

2 Q. And specifically referring to your case --
3 and I'm talking about the one that was supposed to
4 start trial I think in -- was it in late October or
5 early November?

6 A. No. I think it was a week, the following
7 week after October 24.

8 Q. So probably like on Halloween, or sometime
9 around Halloween in 2017?

10 A. It was a holiday on a Friday, I think. It
11 was going to begin on a Monday.

12 Q. And that was the trial involving the
13 Sosoya assault?

14 A. Yes, ma'am.

15 Q. In that case, isn't it true that the
16 attorney for your co-defendant, before he ended up
17 pleading guilty, had actually asked for a
18 continuance?

19 A. Which co-defendant?

20 Q. I think it was Mr. Mauricio Varela's
21 attorney?

22 A. No, he was not my co-defendant.

23 Q. Was Mr. Varela charged in that case?

24 A. He was charged in that indictment.

25 Q. And he was charged in that indictment, but

1 not with the same counts?

2 A. There was two different cases in that
3 indictment.

4 Q. Let's just be clear. It was one
5 indictment and one case number; right?

6 A. Two case numbers. One indictment with two
7 different charges. Two different incidents.

8 Q. That's what I wanted. So there was one
9 indictment and there was going to be one trial. But
10 there were at least two different assaults that were
11 going to be tried.

12 A. Yes, ma'am.

13 Q. And the lawyer for Mr. Varela who was
14 charged in a different assault -- I think he was
15 charged in the Silva assault?

16 A. That's correct.

17 Q. That lawyer actually asked the Court and
18 filed with the Court for a continuance of the trial.
19 Do you recall that?

20 A. I do not.

21 Q. Well, do you recall that when she did file
22 for a continuance, that you opposed, you and your
23 lawyer opposed a continuance?

24 A. Yes.

25 Q. And that was sometime prior, earlier in

1 October of 2017. Maybe even in September.

2 A. I don't know the dates, but it had to be
3 before October 24.

4 Q. And you do now recall that you guys
5 actually objected to the continuance, and stated
6 that you wanted to go to trial?

7 A. Under -- yes.

8 Q. Okay. And at some point after that, did
9 you become aware that your lawyer didn't seem like
10 he was ready to go to trial?

11 A. No, he seemed ready.

12 Q. Did -- so you're saying you had no
13 concerns about whether your case was ready, and
14 whether your lawyer was ready to proceed to trial?

15 A. I felt that I was going to win that case.

16 Q. And so at some point you changed your mind
17 and decided not to go to trial.

18 A. That's correct.

19 Q. And you did that right before the trial
20 was supposed to start?

21 A. That's correct.

22 Q. And was at least the added pressure on you
23 on the eve of trial part of the decision that led
24 you to become a Government witness?

25 A. What pressure?

1 Q. Maybe I'm assuming. You didn't feel any
2 pressure?

3 A. Pressure to give my life to the SNM?
4 Yeah, I didn't want to give them the rest of my
5 life.

6 Q. I think when Ms. Armijo was asking you
7 questions, you talked about the fact that you didn't
8 have -- you felt like you didn't have that much more
9 time to do; right?

10 A. That's correct.

11 Q. And you were looking at, if you lost, if
12 you went to trial and lost, you were looking at a
13 potential sentence of 30 years.

14 A. If you check my history, that's never been
15 an issue with me.

16 Q. So your testimony is: The fact that you
17 were sort of short-timing and all of a sudden
18 looking at a 30-year sentence -- that did not
19 contribute -- that wasn't any sort of pressure that
20 led you to become a Government witness?

21 A. No, ma'am.

22 MS. JACKS: Thank you. I have nothing
23 further.

24 THE COURT: Thank you, Ms. Jacks.

25 Ms. Armijo, do you have redirect?

1 REDIRECT EXAMINATION

2 BY MS. ARMIJO:

3 Q. I believe you just said that the pressure
4 you felt was the pressure to give your life to SNM?

5 A. That's correct.

6 Q. I want to briefly touch on a couple of
7 things. The Ronald Sanchez has been described by
8 the defense as an interview. Was that an interview?

9 A. I don't believe it was an interview.

10 Q. And who wanted to meet with the FBI?

11 A. Ronald Sanchez.

12 Q. And they also talked about a meeting with
13 Chris Cupit and Sergio Sapien. Did that have
14 anything to do with this case, or was that separate?

15 A. That had to do with --

16 MS. JACKS: Objection. Calls for the
17 conclusion. I don't think this witness is in the
18 position to know.

19 THE COURT: Well, ask him if he knows.
20 Lay some foundation.

21 BY MS. ARMIJO:

22 Q. Let me ask you this. Was it about your
23 testimony?

24 A. Somewhat, yes.

25 Q. Was the prosecution team there?

1 A. No.

2 Q. Now, in reference to -- how many years
3 before you decided to cooperate -- how many years
4 had you been an SNM member?

5 A. Since 2005.

6 Q. All right. So approximately 12 years?

7 A. According to -- 2017? Yeah, 12 years.

8 Q. Is it easy to cover all of your SNM
9 activities of 12 years in interviews that are a few
10 hours long?

11 A. No.

12 Q. And you were asked by Ms. Bhalla about
13 Carlos Herrera and whether or not he did anything.
14 I believe you indicated that everyone is good for
15 something; is that correct?

16 A. That's correct.

17 Q. And when you said that, were you referring
18 to the SNM?

19 A. Yes.

20 Q. Did Carlos Herrera give you the paperwork?

21 A. Yes, he did.

22 Q. Was that paperwork necessary to kill
23 Javier Molina?

24 A. Yes, it is.

25 Q. And lastly, over the past couple days that

1 you've been testifying, is what you've told us the
2 truth?

3 A. It is.

4 MS. ARMIJO: No further questions.

5 THE COURT: Thank you, Ms. Armijo.

6 All right. Mr. Rodriguez, you may step
7 down.

8 Is there any reason that Mr. Rodriguez
9 cannot be excused from the proceedings, Ms. Armijo?

10 MS. ARMIJO: Your Honor, I believe we were
11 still going to have him available, because there was
12 one incident at the bench that we need to address.

13 THE COURT: All right. You may need to be
14 re-called, but you'll need to stay, of course,
15 outside of the courtroom. But you're free to leave
16 the courthouse now.

17 THE WITNESS: Thank you, Your Honor.

18 MR. LOWRY: The admonishment of the
19 witness?

20 THE COURT: Mr. Rodriguez, since you're
21 subject to re-call, you're not to discuss your
22 testimony or this case with anyone. So don't do
23 that, wherever you go and whoever you're talking to.

24 THE WITNESS: Okay, Your Honor.

25 THE COURT: Thank you, Mr. Rodriguez.

1 All right. Mr. Castellano, does the
2 Government have its next witness or evidence?

3 MR. CASTELLANO: Yes, Your Honor. The
4 United States re-calls Manuel Jacob Armijo.

5 MS. DUNCAN: Your Honor, may we approach
6 before he starts the questioning?

7 THE COURT: Mr. Armijo, if you'll come up
8 and stand next to the witness box, I'll remind you
9 you're still under oath.

10 (The following proceedings were held at
11 the bench.)

12 MS. DUNCAN: Your Honor, I wanted to make
13 a record on calling Mr. Armijo to testify to the two
14 James statements, one allegedly made by Chris Garcia
15 and the other by Jonathan Gomez. We objected before
16 that these statements do not fall within the
17 co-conspirator objection. I just wanted to raise --
18 I know you're inclined to overrule.

19 THE COURT: Did I rule on the chart on
20 these?

21 MS. DUNCAN: No. This is the one where
22 the Government sent us a letter on January 28
23 outlining these statements. We objected to the late
24 disclosure. And the Court ordered them not to ask
25 Mr. Armijo about the questions or about those two

1 topics when he testified last week, and indicated
2 they were bringing him back.

3 MR. CASTELLANO: He said he would be
4 willing to give the defense more time, so we
5 recalled him now. Just give the defense a change.

6 THE COURT: Let me just refresh my memory
7 about the statements. But I do recall a
8 conversation here. Is it in the letter?

9 MS. DUNCAN: It is. It's in the James
10 letter. I think it was towards the back, like at
11 the very end of the letter.

12 MR. LOWRY: I'll get my letter.

13 MS. DUNCAN: Okay. It should be dated
14 January 28.

15 THE COURT: That was the 28th, and this is
16 the one with the co-conspirator statements.

17 MS. DUNCAN: See if I have it.

18 MR. CASTELLANO: I can summarize the
19 issue, if it's easier. The first one is: Mr.
20 Armijo was in the Department of Corrections. He
21 received word through Jonathan Gomez. I think he
22 knows him as Baby G. And Baby G told him Pup, Mr.
23 Baca, wanted Mr. Molina killed. Mr. Armijo asked
24 for the paperwork. They didn't have it, so he said
25 that he was not willing to follow through with that.

1 So the statement is that Mr. Baca told Baby G that
2 he wanted Mr. Armijo to murder Mr. Molina.

3 The second statement is one about December
4 2015, around that timeframe. Mr. Armijo goes to
5 Chris Garcia's house to purchase drugs, and during
6 that conversation Mr. Garcia tells Mr. Armijo, Pup
7 has us on a mission, after he asked about Chuco, who
8 is Mandel Parker. He asked that Mr. Armijo didn't
9 know anything about him. Mr. Armijo said he'd given
10 him a ride one time before, didn't really know him.
11 And in the context of that conversation, Mr. Garcia,
12 Pup, has us on a mission to kill Marcantel.

13 MS. DUNCAN: Your Honor, I just have the
14 pages of the letter regarding Jake Armijo. It was
15 January 29. It's at the very bottom and continues
16 on the next page. That's it.

17 THE COURT: Well, I thought we established
18 every element with all those people as part of the
19 separate conspiracy. Unless I'm missing something,
20 I've ruled on every one of these as part of the
21 conspiracies. They look like they're in furtherance
22 of it, but my memory is: The only issue I had was
23 timing. The letter was on the 28th and so close to
24 testimony needed more time. Do you have anything
25 else on that?

1 MS. DUNCAN: That was it. I wanted to
2 preserve my objection.

3 MR. CASTELLANO: The statements were
4 disclosed on the 12th. We highlighted it in the
5 James letters.

6 MS. DUNCAN: Thank you, Your Honor.

7 (The following proceedings were held in
8 open court.)

9 THE COURT: All right, Mr. Armijo. I
10 think I told you that you're still under oath.

11 THE WITNESS: Yes.

12 THE COURT: All right.

13 Mr. Castellano, if you wish to conduct
14 direct examination of Mr. Armijo, you may do so at
15 this time.

16 MR. CASTELLANO: Thank you, Your Honor.
17 May I have a few moments to show these exhibits to
18 defense counsel?

19 THE COURT: You may.

20 MANUEL JACOB ARMIJO,
21 after having been previously duly sworn under
22 oath, was questioned, and continued testifying as
23 follows:

24 REDIRECT EXAMINATION

25 BY MR. CASTELLANO:

1 Q. Good afternoon, Mr. Armijo.

2 A. Good evening.

3 Q. I didn't get a chance to ask you a
4 question on a few topics last week, so I wanted to
5 call you back to ask you about two or three
6 incidents.

7 Okay. Do you recall when you were
8 previously housed in the Southern New Mexico
9 Correctional Facility when you were still in prison?

10 A. Yes.

11 Q. And about when did you get out of prison?

12 A. 2012, March.

13 Q. And before that time, in possibly 2011,
14 did you have a conversation with somebody you knew
15 as Baby G?

16 A. Yes.

17 Q. And do you know Baby G's real name?

18 A. I don't recall his name.

19 Q. So did you just know him as "Baby G"?

20 A. Yes.

21 Q. In which pod were you at the time?

22 A. I was in blue pod.

23 Q. And can you tell the members of the jury
24 if Javier Molina was living with you in that pod at
25 that time?

1 A. Yes, he lived across from me.

2 Q. And where was Baby G housed?

3 A. He lived in yellow pod, which is next door
4 to blue pod.

5 Q. I want to ask you about a conversation you
6 had with Baby G. Do you remember him calling you to
7 the door in between the two pods?

8 A. Yes.

9 Q. Can you tell the members of the jury what
10 Baby G asked you or told you?

11 A. He called me to the door while we were out
12 on tier time, and on the top tier. I went to the
13 door and asked him what was going on. He told me
14 that he got word from the North, from the North
15 facility, that there was paperwork on Javier Molina,
16 and that Pup wanted him hit. I told him to show me
17 the paperwork and send it over.

18 Q. What was the purpose or the importance of
19 him showing you the paperwork?

20 A. Well, without paperwork, there is a
21 possibility that people could just hold a grudge, or
22 personal reasons for them to have someone assaulted.

23 Q. What happened when you asked for the
24 paperwork?

25 A. He said he didn't have any.

1 Q. What was your response to not having the
2 paperwork?

3 A. I told him that nobody was going to do
4 anything to him.

5 Q. And "to him," do you mean Javier Molina?

6 A. Yes.

7 Q. And what was his response?

8 A. He just dropped it and said, "Okay."

9 Q. Now, what was your position in the board
10 of directors at the time?

11 A. I was a llavero.

12 Q. So were you running blue pod at that time?

13 A. Yes.

14 Q. And did you give any orders to anyone in
15 the pod after hearing the request for the murder but
16 not having the paperwork?

17 A. Yes.

18 Q. What was the order you gave to people in
19 the pod?

20 A. That nobody was to touch him.

21 Q. Now, as llavero of that pod, what would
22 have happened, had Baby G produced that paperwork to
23 you?

24 A. Then we would have had to hit him.

25 Q. Did you like Javier Molina?

1 A. Yes.

2 Q. Did it matter if you liked Javier Molina?

3 A. No.

4 Q. So running the pod -- was that your
5 responsibility, then, to make sure that happened?

6 A. Yes.

7 Q. I want to take you back to the December
8 2015 timeframe and ask you if you know a person
9 named Chris Garcia.

10 A. Yes.

11 Q. Was he an SNM Gang member?

12 A. Yes.

13 Q. Was he also a drug dealer?

14 A. Yes.

15 Q. During that timeframe, did you ever go to
16 Chris Garcia's house to purchase drugs from him?

17 A. Yes, to his mother's.

18 Q. What were you intending to purchase from
19 him?

20 A. Heroin.

21 Q. So were you still using heroin at that
22 time?

23 A. Off and on.

24 Q. All right. And what happened when you
25 went to Chris Garcia's mother's?

1 A. The first time I followed Mario Montoya
2 over there to his house, and Chris Garcia ended up
3 giving him some heroin, and me, and another guy that
4 was there.

5 Q. Who was the other guy?

6 A. Salamon Ramirez.

7 Q. How is it that you ended up meeting with
8 Mario Montoya and then going to Chris Garcia's
9 mother's house?

10 A. I usually get it from Mario Montoya, and
11 Mario said he didn't have anything, but he was on
12 his way to Chris' to go pick up; to follow him over
13 there.

14 Q. Did you do that?

15 A. Yes.

16 Q. What happened when you got to Chris
17 Garcia's, or his mother's?

18 A. We all talked for a while. And then Chris
19 ended up giving Mario Montoya a gun. Mario Montoya
20 put it under his shirt, and went and put it in the
21 trunk of his car. Came back. Chris Garcia ended up
22 giving him some heroin; gave some to Salamon
23 Ramirez. Then they left. And they came up to me,
24 and he continued to break me off a piece.

25 Q. When you say "break me off a piece," what

1 do you mean?

2 A. He just had a knife and he had like about
3 a golf-ball size of heroin. With his knife, just
4 cut me off a piece.

5 MR. CASTELLANO: May I approach the
6 witness, Your Honor?

7 THE COURT: You may.

8 BY MR. CASTELLANO:

9 Q. Mr. Armijo, I'm going to show you a number
10 of exhibits and have you just look at them to
11 yourself and see if you recognize the person in
12 those exhibits.

13 A. Yes.

14 Q. How do you recognize those exhibits?

15 A. That's Chris Garcia.

16 Q. And are these photos a fair and accurate
17 depiction of the person you know to be Chris Garcia?

18 A. Yes.

19 MR. CASTELLANO: Your Honor, I move the
20 admission of these exhibits. I'll give the Court
21 the numbers. They're not sequential at this time.
22 Government's Exhibits 527, 508, 510, 511, 512, 513,
23 515, 523, 518, 524 and 525.

24 THE COURT: Any objection from the
25 defendants?

1 MR. JEWKES: May we examine, Your Honor?

2 THE COURT: You may.

3 MS. JEWKES: No objection on behalf of
4 Daniel Sanchez, Your Honor.

5 THE COURT: Anyone else have any
6 objection?

7 MS. DUNCAN: No, Your Honor.

8 MR. VILLA: No, Your Honor.

9 THE COURT: You might listen carefully.
10 There was a cough. I want to make sure I got it
11 right. Government's Exhibits 527, 508, 510, 512,
12 513, 515, 523, 518, 524 and 525 will be admitted
13 into evidence. Did I get those correct?

14 MR. CASTELLANO: You did, Your Honor.
15 Thank you.

16 (Government Exhibits 508, 510, 512, 513,
17 515, 518, 523-525, 527 admitted.)

18 THE COURT: Mr. Castellano.

19 BY MR. CASTELLANO:

20 Q. Now, on that occasion you mentioned Chris
21 Garcia giving a gun to Mario Montoya?

22 A. Yes.

23 Q. Did he also give drugs to Mario Montoya
24 and Salamon Ramirez?

25 A. Yes.

1 Q. Can you tell the members of the jury
2 whether all four of you at that time were SNM Gang
3 members?

4 A. Yes.

5 Q. I'm showing you Government's Exhibit 527.
6 Is that Chris Garcia?

7 A. Yes.

8 Q. And is that the person you purchased drugs
9 from?

10 A. Yes.

11 Q. I'm showing you Government's Exhibit 508.
12 Do you recognize Mr. Garcia and some of his tattoos?

13 A. Yes.

14 Q. Government's Exhibit 510. I'm going to
15 circle something on his left side in that photo. Do
16 you recognize what I've circled there?

17 A. Yes.

18 Q. What is that?

19 A. It's a Zia with an S inside.

20 Q. What does that tattoo mean to you?

21 A. It represents the Sindicato de Nuevo
22 Mexico.

23 Q. Showing you Government's Exhibit 511.

24 A. Yes.

25 Q. And do you recognize Chris Garcia from the

1 back there?

2 A. Yes.

3 Q. Also Exhibit 512?

4 A. Yes.

5 Q. The tattoo on his right shoulder, which
6 says Duke City -- is that an Albuquerque thing, or
7 does it have anything to do with the SNM?

8 A. Just an Albuquerque thing.

9 Q. Do you know Albuquerque as the Duke City?

10 A. Yes.

11 Q. I'm showing you Exhibit 513, and is that
12 just a side view of Mr. Garcia?

13 A. Yes.

14 Q. Government's Exhibit 515. I'm going to
15 circle something on his abdomen here. Do you see
16 what I've circled there?

17 A. Yes.

18 Q. What is that, if you know?

19 A. Where he got shot.

20 Q. And I won't ask you about it today, but do
21 you know some of the history about how he got shot?

22 A. Yes.

23 Q. I'm showing you Government's Exhibit 523.
24 Is that just a closer view of that scar?

25 A. Yes.

1 Q. Next is Exhibit 518. What do you see on
2 his hands there?

3 A. NM.

4 Q. And what significance does that have to
5 you?

6 A. Just New Mexico.

7 Q. And Exhibit 524. What is that on his
8 lower back?

9 A. Burque.

10 Q. What does that mean?

11 A. Albuquerque in Spanish.

12 Q. And 525. Is that just a picture of his
13 entire back?

14 A. Yes.

15 Q. Now, you told you about this time you got
16 drugs from Mr. Garcia. Did you return to his house
17 about a week later?

18 A. Yes.

19 Q. Why did you do that?

20 A. I called him earlier that day and asked
21 him if he had anything, some heroin, and he told me,
22 yeah, but to meet him at his mom's house.

23 Q. Did you meet him on that day?

24 A. Yes.

25 Q. What happened when you went to his mom's

1 house?

2 A. I met him there at his mom's. He got into
3 my vehicle. We just started talking. While he was
4 breaking me off some heroin, he asked me if I knew
5 Chuco, Mandel Parker. I told him, yes, that I had
6 met him once, had given his girlfriend and his
7 little girl a ride home. I asked him why, what was
8 up. And he said, "Because fucking Pup has us on a
9 mission."

10 Q. Did he explain to you what that mission
11 was?

12 A. Yes.

13 Q. What was it?

14 A. That they wanted him to hit Gregg
15 Marcantel.

16 Q. Did you know who Gregg Marcantel was at
17 that time?

18 A. No.

19 Q. And had you been to prison since 2012?

20 A. No.

21 Q. Did he explain to you who Gregg Marcantel
22 was?

23 A. Yes. He was the Secretary of Corrections.

24 Q. What did you think about that?

25 A. I told Chris that he was stupid to listen

1 to anything that Pup had to say; that he was going
2 to be the downfall of everybody.

3 Q. And did you know Mandel Parker to be an
4 SNM Gang member?

5 A. Yes.

6 MR. CASTELLANO: May I have a moment, Your
7 Honor?

8 THE COURT: You may.

9 MR. CASTELLANO: Thank you, Your Honor. I
10 pass the witness.

11 THE COURT: Thank you, Mr. Castellano.

12 Ms. Duncan, do you wish to cross-examine
13 Mr. Armijo?

14 MS. DUNCAN: I do, Your Honor. Thank you.

15 THE COURT: Ms. Duncan.

16 RE CROSS-EXAMINATION

17 BY MS. DUNCAN:

18 Q. Good afternoon.

19 A. Good afternoon.

20 Q. You first met Chris Garcia in prison in
21 the 2000s; correct?

22 A. Yes.

23 Q. And I think you testified he's an SNM
24 member?

25 A. Yes.

1 Q. And you didn't agree with him being made
2 an SNM member; correct?

3 A. No.

4 Q. Because you thought he was a snitch?

5 A. No, I actually thought they were just
6 bringing him in because he had drugs.

7 Q. Do you recall giving a statement to law
8 enforcement on June 28, 2016?

9 A. Yes.

10 Q. And that was right after you decided to
11 cooperate in this case; correct?

12 A. Yes.

13 Q. And do you recall telling law enforcement
14 at that time that you didn't agree with Chris Garcia
15 being brought into the SNM, quote, "because he had
16 snitched on a prior case while on the streets"?

17 A. Yes, that was another reason.

18 Q. You testified that you bought heroin from
19 Chris Garcia; correct?

20 A. Yes.

21 Q. And did you do heroin with Chris Garcia?

22 A. There's been a couple of times, yes.

23 Q. And when is the last time that you did
24 heroin with Chris Garcia?

25 A. I can't recall.

1 Q. Was it within the last year?

2 A. No.

3 Q. Within the last two years?

4 A. It was about a couple months before this
5 case, before the first sweep.

6 Q. And do you recall when that first sweep
7 was?

8 A. It was in December 2015, I think.

9 Q. Mr. Armijo, you also have used
10 methamphetamine in the past; correct?

11 A. Yes.

12 Q. And you bought the methamphetamine from
13 someone other than Chris Garcia?

14 A. Yes.

15 Q. And when you were using -- when were you
16 using methamphetamine?

17 A. 2012, when I first got out of prison.

18 Q. And you suffered hallucinations when using
19 methamphetamine; correct?

20 A. No.

21 Q. Do you recall being interviewed for a
22 presentence report in this case?

23 A. No.

24 Q. Do you recall reviewing a presentence
25 report that was provided to you for this case?

1 A. I don't think me and my lawyers reviewed
2 it.

3 Q. It was disclosed in October of 2017;
4 correct?

5 A. What?

6 Q. The presentence report was disclosed to
7 your lawyer in October of 2017; correct?

8 A. Oh, yes, yes.

9 Q. And so it's your testimony that in the
10 last four months, you have not reviewed this
11 document?

12 A. I don't think we have.

13 Q. You understand this is a document that
14 Judge Browning will rely on in deciding your
15 sentence in this case?

16 A. I assume so, yes.

17 Q. Do you recall being interviewed by the
18 Evolution Group?

19 A. Yes.

20 Q. And that was in July of 2016?

21 A. Yes.

22 Q. And they completed a biosocial summary
23 report for you?

24 A. Right.

25 Q. Based on that interview?

1 A. Yes.

2 Q. And do you recall them concluding or
3 acknowledging that you had hallucinations when using
4 methamphetamine?

5 A. They said I had hallucinations.

6 Q. I'm asking you: Do you recall them
7 telling you that, based on their interview of you?

8 A. How would they know if I'd had
9 hallucinations or not?

10 Q. I'm asking if you discussed that with
11 Evolution Group.

12 A. No.

13 Q. Do you recall discussing with Evolution
14 Group that you have trouble understanding,
15 concentrating, and remembering?

16 A. Concentrating, yes.

17 Q. Do you recall discussing with Evolution
18 Group that you have trouble controlling your violent
19 behavior?

20 A. Yes. At a time, yes.

21 Q. And are you on any psychiatric medication?

22 A. Yes.

23 Q. What drugs are you on?

24 A. Abilify.

25 Q. And what is that intended to treat?

1 A. Anger, PTSD.

2 Q. And it's an antipsychotic drug; correct?

3 A. Yes.

4 Q. You testified that you went to Chris
5 Garcia's house with Mario Montoya; correct?

6 A. Yes.

7 Q. And Mario Montoya is also known as Poo
8 Poo?

9 A. Yes.

10 Q. Mr. Montoya got close to Chris Garcia
11 because you and Mr. Montoya planned to rob Chris
12 Garcia; correct?

13 A. Yes.

14 Q. You planned to steal two kilos of cocaine
15 from him?

16 A. Yes.

17 Q. Tell us about that plan.

18 A. It was a plan that we were going to do,
19 and it never happened.

20 Q. Whose plan was it?

21 A. Mine.

22 Q. And when did you come up with this plan?

23 A. I would say in the early 2000s.

24 Q. In April of 2016 you were charged with a
25 RICO conspiracy; correct?

1 A. Yes.

2 Q. And there were a number of overt acts
3 charged in support of that; correct?

4 A. Yes.

5 Q. And those were things that the Government
6 alleged you did in support of the SNM; correct?

7 A. Yes.

8 Q. And one of those was ordering two people
9 to murder a man named Michael Giron; correct?

10 A. It was alleged, yes.

11 Q. And it was alleged that you ordered that
12 in conjunction with Chris Garcia; correct?

13 A. Yes.

14 Q. And at this time that you told the FBI,
15 you first raised this conversation with Chris
16 Garcia, you had been charged in that conspiracy;
17 correct?

18 A. The conversation never happened.

19 Q. The conversation that you had with the --
20 the first time you talked to the FBI about this
21 alleged conversation with Chris Garcia regarding
22 Gregg Marcantel; correct?

23 A. Yes.

24 Q. That first happened in June of 2016;
25 correct? Your first conversation with the FBI?

1 A. Yes.

2 Q. So that was two months after you had been
3 charged in the RICO conspiracy?

4 A. Yes.

5 Q. And the Government was alleging that you
6 had committed a crime with Chris Garcia?

7 A. Yes.

8 Q. And you knew from that indictment that Mr.
9 Baca and Chris Garcia were charged with a conspiracy
10 to kill Gregg Marcantel; correct?

11 A. I knew when I first read it on the
12 internet, yes.

13 Q. I'd like to talk to you about this alleged
14 conversation you had with Baby G. I think you
15 testified that you didn't know his real name;
16 correct?

17 A. Yes.

18 Q. How long had you known Baby G?

19 A. For about a year and a half.

20 Q. And you did not like Baby G, did you?

21 A. There was a time I did, up until Pup got
22 there to Southern.

23 Q. At the time that you alleged Baby G had
24 had conversation with you, you did not like Baby G;
25 correct?

1 A. I didn't have a problem with him at the
2 time we had the conversation, no.

3 Q. Isn't it true that you believe that Baby G
4 conveyed the hit on you?

5 A. Yes.

6 Q. And that when you heard about this, you
7 collected a shank and told Baby G, "It's on"?

8 A. Yes.

9 Q. Last week when we were talking, we
10 discussed a conviction for battery on a police
11 officer in 2008; correct?

12 A. Yes.

13 Q. And you couldn't recall if you had been
14 convicted of that crime?

15 A. Right.

16 Q. Do you recall today that you were
17 convicted of that crime?

18 A. Yes.

19 Q. And at the time that this case was
20 charged, you believed that Gerald Archuleta was the
21 leader of the SNM; correct?

22 A. Yes.

23 Q. For what period of time do you believe
24 that Gerald Archuleta was the leader of the SNM?

25 A. Up until he decided to work with the FBI.

1 Q. And what do you base your opinion that
2 Gerald Archuleta was the leader of the SNM on?

3 A. My opinion.

4 Q. What's your opinion based on?

5 A. That he is a leader of the SNM -- was.

6 Q. Do you have a relationship with Gerald
7 Archuleta?

8 A. Yes.

9 Q. In fact, you've provided drugs to Gerald
10 Archuleta at his request?

11 A. No.

12 Q. I'm going to refer you again to the
13 conversation that you had with the FBI in June of
14 2016. Do you recall talking to the FBI about
15 keeping in touch with Gerald Archuleta after he
16 moved to Tennessee?

17 A. Yes.

18 Q. And you told the FBI that Gerald Archuleta
19 would ask you for Suboxone because it was expensive
20 in Tennessee; correct?

21 A. Yes.

22 Q. And that you complied a few times;
23 correct?

24 A. Yes.

25 Q. And by complying, you meant that you sent

1 drugs to Gerald Archuleta to Tennessee?

2 A. No. I sent Suboxones. Suboxones ain't a
3 drug. Suboxones are to help people get off the
4 drug.

5 Q. Suboxone is something you need a
6 prescription for; correct?

7 A. Yes.

8 Q. It's a drug used to treat heroin
9 addiction; correct?

10 A. Yes.

11 Q. And you sent that to Gerald Archuleta?

12 A. Yes.

13 MS. DUNCAN: If I could have a moment,
14 Your Honor.

15 No further questions, Your Honor.

16 THE COURT: Thank you, Ms. Duncan.

17 Mr. Jewkes, do you have cross-examination
18 of Mr. Armijo?

19 MR. JEWKES: Yes, Your Honor.

20 THE COURT: Mr. Jewkes.

21 MR. JEWKES: Your Honor, may it please the
22 Court?

23 THE COURT: Mr. Jewkes.

24

25

1 RECROSS-EXAMINATION

2 BY MR. JEWKES:

3 Q. Good afternoon, Mr. Armijo.

4 A. Good afternoon.

5 Q. You were here last week and testified, I
6 believe it was on Wednesday?

7 A. Yes.

8 Q. And if I recall correctly, you told us
9 that you joined the SNM in 1995?

10 A. '93.

11 Q. And you were validated?

12 A. Yes.

13 Q. And how long were you a validated member
14 of SNM?

15 A. I have no idea. You'd have to ask the
16 STIU.

17 Q. I'm sorry?

18 A. You would have to ask the STIU how long
19 they had me validated.

20 Q. When did you leave prison?

21 A. 2012.

22 Q. Okay. Do you still consider yourself a
23 member of SNM?

24 A. No.

25 Q. Well, in that case, we're looking at close

1 to 20 years --

2 A. Yes.

3 Q. -- with SNM, give or take; would you agree
4 with that?

5 A. Yes.

6 Q. You testified a while ago that you knew
7 Javier Molina?

8 A. Yes.

9 Q. How much time did you serve with him?

10 A. About a year and a half or so.

11 Q. Where?

12 A. Las Cruces, New Mexico, Southern.

13 Q. And you liked him?

14 A. Yes.

15 Q. Did he have problems with other inmates --

16 A. No.

17 Q. -- that you could see?

18 A. No.

19 Q. No? He was liked by everyone?

20 A. Yes.

21 Q. He wasn't mouthy?

22 A. No.

23 Q. He didn't rag on some of the other
24 inmates?

25 A. We all kind of did that to each other. It

1 was nothing to be taken serious. It was just part
2 of doing time, part of us just clowning with each
3 other.

4 Q. Are you just saying it's playful behavior?

5 A. Yes.

6 Q. Mr. Armijo, you were Angel Munoz's
7 bodyguard for a number of years; is that correct?

8 A. Yes.

9 Q. And you held that position because you
10 were considered by the organization to be a heavy
11 hitter?

12 A. Yes.

13 Q. You know what a heavy hitter is?

14 A. Yes.

15 Q. A heavy hitter is someone who can take
16 human life. Would you agree with that?

17 A. Yes.

18 Q. And during your career, can we safely
19 assume you have witnessed -- witnessed, aware of --
20 a number of hits?

21 A. Yes.

22 Q. And if you were called upon to do so,
23 could you plan a hit in a prison facility?

24 A. Yes.

25 Q. How would you do it? What factors would

1 you look at, Mr. Armijo?

2 A. Hum.

3 Q. Hypothetically speaking.

4 A. For one, the reason.

5 Q. In other words, you have to have a reason
6 to take human life?

7 A. Yes.

8 Q. All right. That's reason Number 1.
9 What's reason Number 2, if there is a reason Number
10 2?

11 A. There is just a reason Number 1.

12 Q. Okay. Let's talk about the factors in
13 planning. Where do you do it?

14 A. The least obvious place. One place that's
15 somewhere where you won't get caught.

16 Q. You don't want to get caught?

17 A. Of course not.

18 Q. You don't want to do it in front of
19 cameras, do you?

20 A. No.

21 Q. And do you do it in kind of an
22 out-of-the-way place? Would you agree with that?

23 A. Yes.

24 Q. In a prison facility, what would be some
25 of the more out-of-the-way places, such as, say,

1 Southern New Mexico?

2 A. There is no place out of the way. There's
3 about three or four cameras in the unit. There's a
4 guard in the bubble. There's one that walks. So
5 usually they have full range of the cameras. The
6 cameras you can't really hide from.

7 Q. All right. So you and I are planning a
8 hit. What are we going to use for weapons? What's
9 the most effective weapon?

10 A. A shank.

11 Q. A shank?

12 A. Yep.

13 Q. You like a shank better than, say, a
14 ligature?

15 A. Do I?

16 Q. Yes, hypothetically speaking.

17 A. I would prefer, yes.

18 Q. A shank?

19 A. Yes.

20 Q. Why?

21 A. It gets the job done faster.

22 Q. So you're concerned about speed and
23 effectiveness?

24 A. Yes.

25 Q. And it's faster than using a ligature?

1 A. Yes, but it's also a little dirtier.

2 Q. Sure. Because there's going to be blood?

3 A. Yes.

4 Q. And just for the record, in case anyone on
5 the jury doesn't know what a ligature is, can you
6 explain what a ligature is?

7 A. A sheet tied up, braided up.

8 Q. For the purpose of strangulation; right?

9 A. Yes.

10 Q. Okay. Now, we've already decided we're
11 going to use a shank. Maybe two shanks. And where
12 are we going to try to catch our target?

13 A. Probably in his room or in the shower.

14 Q. When they go in the shower, it's locked,
15 isn't it?

16 A. No.

17 Q. You can nail somebody in the shower?

18 A. Yes.

19 Q. Actually, that would be better, because
20 there's not going to be any cameras inside that
21 shower. Would you agree with that?

22 A. Yes.

23 Q. So as a professional -- you and I are
24 professionals. All right? What -- we want to get
25 it done quickly, cleanly, how many times do we nail

1 him? How many times do we stab him?

2 A. Once.

3 Q. Once?

4 A. That's all you need.

5 Q. Can we get it done with one?

6 A. Possible.

7 Q. Where do we stab him?

8 A. The neck or in the underarm.

9 Q. In the neck, of course, we're talking
10 about a major artery.

11 A. Yes.

12 Q. Under the arm, we're talking about another
13 major artery.

14 A. Yes.

15 Q. Either way, it's a fairly quick death.
16 They bleed out quickly, don't they?

17 A. Yes.

18 Q. So if we're lucky, you and I can get the
19 job done, one wound, maybe two? Would you agree
20 with that?

21 A. Yes.

22 MR. CASTELLANO: At this point, I'm going
23 to object as to beyond the scope of direct, Your
24 Honor.

25 THE COURT: Overruled.

1 BY MR. JEWKES:

2 Q. Okay. There's going to be two of us doing
3 this, Mr. Armijo. What part does each one of us
4 play to get this done effectively and efficiently?

5 A. One to watch and one to do it.

6 Q. Why do we need one to watch?

7 A. To make sure nobody is coming.

8 Q. Lookout?

9 A. Yes.

10 Q. Okay. And the hitter. What does he do?
11 How does he do it?

12 A. Just attack the person, get it done right
13 away.

14 Q. From the front or the rear?

15 A. From the rear.

16 Q. Come up behind and get his forearm under
17 his chin?

18 A. No, not really.

19 Q. No?

20 A. No.

21 Q. Just take him head-on?

22 A. There could be several ways. I don't
23 know.

24 Q. But nevertheless, if you and I know what
25 we're doing, we can get it done with at least a

1 couple of wounds; right?

2 A. Yes.

3 Q. How often in your 27 years in prison have
4 you seen inmates exhibit rage?

5 A. Plenty.

6 Q. Plenty?

7 A. Yes.

8 Q. A lot of guys are sore about being in
9 prison; right?

10 A. Yes.

11 Q. You'll have to excuse my voice. I've got
12 a little issue with something. A virus.

13 A. All right.

14 Q. A lot of people that go to prison are
15 angry, aren't they?

16 A. Yes.

17 Q. Some of them lose it, I guess, and some of
18 them don't?

19 A. Yes.

20 Q. Have you ever seen anyone in prison act
21 under rage?

22 A. Yes.

23 Q. Violent acts?

24 A. Yes.

25 Q. How often have you seen that, sir?

1 A. Quite a few times.

2 MR. JEWKES: I pass the witness.

3 THE COURT: Thank you, Mr. Jewkes.

4 Anyone else? Mr. Maynard?

5 MR. MAYNARD: No questions, Your Honor.

6 THE COURT: All right, Mr. Maynard.

7 Mr. Villa?

8 MR. VILLA: Briefly.

9 RECROSS-EXAMINATION

10 BY MR. VILLA:

11 Q. Good afternoon, Mr. Armijo.

12 A. Good afternoon.

13 Q. Mr. Castellano asked you if you were aware
14 of the history about how Mr. Garcia was shot.

15 A. Yes.

16 Q. You said that you were?

17 A. Yes.

18 Q. You know that he was shot by an individual
19 named Shane Dix?

20 A. Yes.

21 MR. CASTELLANO: Objection, calls for
22 hearsay.

23 THE COURT: Ask him if he knows from any
24 source other than his own personal knowledge.

25 MR. VILLA: Well, let me ask -- can I ask

1 if he has personal knowledge?

2 THE COURT: You may.

3 BY MR. VILLA:

4 Q. Do you have personal knowledge that
5 Mr. Garcia was shot by Shane Dix?

6 A. I know he was shot by Shane Dix, yes.

7 Q. Is that from what somebody told you or
8 from what you know yourself?

9 A. That's what Chris told me.

10 Q. From Mr. Garcia?

11 THE COURT: Sustained.

12 Q. Are you aware about Billy Cordova's role
13 in the murder of Shane Dix?

14 MR. CASTELLANO: Objection, calls for
15 hearsay.

16 Q. Through personal knowledge, not from what
17 somebody told you.

18 THE COURT: Why don't you answer these
19 questions yes, no, so we can avoid --

20 A. Yes.

21 Q. So you have personal knowledge about Billy
22 Cordova's role in the murder of Shane Dix?

23 A. Yes.

24 Q. And that comes from what somebody told you
25 or what you observed personally?

1 A. What somebody told me.

2 Q. So just what you've been told?

3 A. Yes.

4 MR. VILLA: Okay.

5 MR. CASTELLANO: I'm going to object.

6 This is hearsay, but the witness doesn't understand.

7 THE COURT: Yeah, I don't think he does,
8 either.

9 MR. CASTELLANO: When we say firsthand
10 knowledge, this is all hearsay.

11 THE COURT: Why don't you start with
12 asking if the only place he's got this information
13 is that somebody told him.

14 BY MR. VILLA:

15 Q. So Mr. Armijo, your knowledge about Billy
16 Cordova's role in the murder of Shane Dix is only
17 what people told you?

18 A. Yes.

19 MR. VILLA: That's all the questions I
20 have.

21 THE COURT: Thank you, Mr. Villa.

22 Mr. Castellano, do you have redirect of
23 Mr. Armijo.

24 MR. CASTELLANO: No, Your Honor.

25 THE COURT: All right. Mr. Armijo, you

1 may step down.

2 Is there any reason that Mr. Armijo cannot
3 be excused from the proceedings, Mr. Castellano?

4 MR. CASTELLANO: No, sir.

5 THE COURT: Can he be excused by the
6 defendants?

7 MR. JEWKES: Yes, Your Honor.

8 THE COURT: All right. Not hearing
9 anybody objecting, you are excused from the
10 proceedings. Thank you for your testimony, Mr.
11 Armijo.

12 All right. Mr. Castellano, does the
13 Government have its next witness or evidence?

14 MR. CASTELLANO: Yes, Your Honor. May I
15 have a moment?

16 Your Honor, our next witness is Jerry
17 Armenta.

18 MS. ARMIJO: Your Honor, may we have a
19 moment to see if his attorney is outside?

20 THE COURT: You may.

21 Come on in.

22 All right, Mr. Armenta, if you'll come up
23 and stand next to the witness box, and before you're
24 seated, my courtroom deputy, Ms. Standridge, will
25 swear you in. If you'll raise your right hand to

1 the best of your ability.

2 JERRY RAY ARMENTA,

3 after having been first duly sworn under oath,

4 was questioned, and testified as follows:

5 THE CLERK: Please be seated. State and
6 spell your name for the record.

7 THE WITNESS: My name is Jerry Ray
8 Armenta, J-E-R-R-Y, R-A-Y, A-R-M-E-N-T-A.

9 THE COURT: Mr. Armenta.
10 Mr. Castellano.

11 DIRECT EXAMINATION

12 BY MR. CASTELLANO:

13 Q. Good afternoon, Mr. Armenta.

14 A. How are you?

15 Q. Are you now or have you ever been an SNM
16 Gang member?

17 A. I was, yes.

18 Q. And why do you say that you were, and not
19 that you are?

20 A. Because I let it down. I threw it away.
21 I took it out of my life. I don't want nothing to
22 do with it anymore.

23 Q. Before you were an SNM Gang member, were
24 you a member of any other gangs?

25 A. A street gang.

1 Q. What was the name of that gang?

2 A. North Side.

3 Q. I'm going to go ahead and show you a
4 photograph which has already been admitted as
5 Government's Exhibit 607, I believe. Let me check.
6 Okay. And is that a picture of any of your tattoos?

7 A. Yes.

8 Q. Let's turn to Exhibit 608. Is that a
9 better picture of your tattoos?

10 A. Yes, sir, that's me.

11 Q. On your abdomen there are three letters,
12 NSL. What does that stand for?

13 A. It stands for North Side Locos.

14 Q. Is that the street gang you referred to
15 earlier?

16 A. Yes.

17 Q. Where was that street gang?

18 A. Out of Gallup, New Mexico.

19 Q. And what does the 114 percent mean on your
20 stomach?

21 A. Well, the 100% is 100 percent. But the 14
22 is a representation of North Side. And it's the
23 14 -- it means the 14th letter of the alphabet,
24 which is N, Norteno. 114 percent.

25 Q. Turning to Exhibit 614, I'll have you look

1 at that exhibit, sir. What is that on the top of
2 your head?

3 A. That is the Zia symbol with the state of
4 New Mexico in the background of it.

5 Q. Why did you get that tattoo?

6 A. Because I was an SNM Gang member.

7 Q. And what significance did the state and
8 the Zia symbol have to you when you got that tattoo?

9 A. It's our flag. It's what we represent.
10 So we use it as a way to represent so that we don't
11 have to say nothing. People will know where we're
12 from when they see it.

13 Q. Have you seen a symbol like that before
14 with the letter S in the middle of it?

15 A. Yes.

16 Q. And did you ever want to or attempt to get
17 the letter S in the middle of that Zia symbol?

18 A. Yes, I did.

19 Q. Why did you not?

20 A. Because they did not let me.

21 Q. Who is "they"?

22 A. Mario Rodriguez and Daniel Sanchez.

23 Q. And why is that?

24 A. Because they said I didn't earn my bones
25 the right way.

1 Q. Now, in your opinion or through the
2 opinion of other SNM Gang members, did you believe
3 at some point you had earned your bones?

4 A. Oh, yeah.

5 Q. And can you tell us about that event?

6 A. Well, when I first got into the SNM, or
7 was brought in, this was in 2005, Lea County
8 Correctional Facility in Hobbs, New Mexico. A bunch
9 of us in the pod, we all got drunk off of some
10 homemade wine, prison-made wine. And some enemies
11 of ours that I didn't know we had, got a little
12 courage, got a little, you know, bigger when they
13 drank the wine and stuff, so they jumped us.

14 Q. Do you know, were they member of another
15 gang or what did you know about them?

16 A. Yes, they were Surenos, New Mexico
17 Surenos.

18 Q. Okay. Tell the members of the jury about
19 getting jumped.

20 A. There was seven or eight individuals. We
21 all got jumped because we were SNM members. At
22 first I didn't know the enemies that I inherited
23 when I got into the gang, so it was a surprise to
24 me.

25 But they jumped us. They beat us up. At

1 the same time, I defended myself. I had a
2 prison-made knife, a shank, and I stabbed one of
3 them. And the friend that I was with got beat up,
4 unconscious. And I also got beat up as well, but
5 not as bad as he did, because I was doing a little
6 more defending.

7 Q. Now, were you trying to defend your
8 friend, as well?

9 A. I was. After a while, they were smashing
10 his head, and I jumped in on top of him so they
11 could stop hitting him.

12 Q. How did that altercation end? Did they
13 just stop? Did the corrections officers stop it?

14 A. They just stopped. And it was a few
15 seconds after that the corrections officers came.
16 And we got down -- I got down on the floor. My
17 friend was already on the floor. And them other
18 guys were already in their cells doing who knows
19 what; I don't know.

20 Q. Now, where did the actual assault happen
21 in the facility?

22 A. It was in Housing Unit 4, D pod, in the
23 day room.

24 Q. Now, at that point in time were SNM
25 members and Surenos housed in the same pod?

1 A. Only me and Michael Armendarres, my friend
2 that was there, and Surenos were in that pod. In
3 other pods in the unit, there was other SNM Gang
4 members there.

5 Q. Now, what, if any, problems or tension
6 were created by you being in a pod with people you
7 learned were your rivals?

8 A. Say that again?

9 Q. Did that create any problems or tension in
10 the pod with being two different gangs in there?

11 A. Yeah, but I didn't understand what was
12 going on. I didn't understand what I had inherited
13 when I got into SNM. So I thought everything was
14 okay. I thought everything was okay; there was a
15 peace, there was a treaty, they were there before.
16 Nothing ever happened before, so I thought it was
17 okay, it was all good.

18 Q. How did you first come into the gang?
19 What year was that?

20 A. 2005. That's when I got in. I mean, I
21 knew gang members from before. I knew them, I knew
22 of them, but when I got in, it was in 2005.

23 Q. Did someone recruit you, or how did you
24 actually --

25 A. Someone recruited me. Someone brought me

1 in.

2 Q. Who was that?

3 A. Michael Armendarres.

4 Q. That was the one you were helping defend?

5 A. Yes.

6 Q. How is it that you found yourself
7 incarcerated? What happened?

8 A. Drug trafficking.

9 Q. Now, how many convictions do you have for
10 drug trafficking?

11 A. Currently, I have four.

12 Q. So were some of those convictions -- did
13 you get those before you were an SNM Gang member?

14 A. Three of them were before SNM Gang
15 membership.

16 Q. How old were you when you were first
17 arrested for your first drug trafficking conviction?

18 A. 19.

19 Q. And how long had you been dealing before
20 then?

21 A. About two years.

22 Q. Now, when you were dealing, then, were you
23 dealing on the streets?

24 A. Yes.

25 Q. And were you dealing for yourself, or for

1 your street gang, or who was it?

2 A. It was just for myself, just getting by,
3 getting the things that I liked and wanted.

4 Q. And what happened as a result of the drug
5 trafficking?

6 A. I had three -- well, I got my first one
7 when I was 19. I picked up two more while waiting
8 for that first one. So I ended up taking a plea
9 bargain for all three of them, and they ran them
10 concurrent. I pled guilty to trafficking on one
11 count on each case, and I got nine years, four years
12 suspended, five years probation.

13 Q. So just so the jury understands, you had a
14 total sentence of nine years?

15 A. Yes.

16 Q. With four years suspended; is that
17 correct?

18 A. Yes.

19 Q. So when the sentence is suspended, are you
20 doing jail or prison time? Or is that time held
21 over your head and you do probation instead?

22 A. It's held over your head, and you do
23 probation instead. If you violate or pick up any
24 other charges while you're on the five years
25 probation, then you can get the four years added on

1 to your sentence.

2 Q. Just so it's clear, I think you said you
3 had an initial arrest for drug trafficking. And
4 then were you out on the streets on conditions of
5 release pending that charge when you picked up
6 additional charges?

7 A. Yes.

8 Q. And ultimately you pled to three cases at
9 one time?

10 A. Yes. They ran them concurrent.

11 Q. Now, considering the fact that you were on
12 probation, how is it that you eventually found
13 yourself in prison?

14 A. I kept getting out and kept violating.

15 Q. And violating what?

16 A. My probation.

17 Q. And what are the kinds of ways you
18 violated your probation?

19 A. I absconded.

20 Q. What does that mean?

21 A. That means not reporting, not calling in.
22 I never went to go see the probation officer,
23 period.

24 Q. And that finally caught up with you?

25 A. And it caught up with me.

1 Q. So where did you end up, as a result of
2 finally getting sentenced to prison?

3 A. When I first got sentenced, I was in RDC,
4 Los Lunas. Then I went to the Level 2 prison there,
5 got into some trouble, got a write-up. My points
6 went. Then that's when I went to Hobbs in 2002.

7 Q. Do you accumulate points for misconduct in
8 prison?

9 A. Yes.

10 Q. And as a result of accumulating points, do
11 you then get moved to potentially a higher level
12 prison facility?

13 A. I went from a Level 2, minimum restrict
14 yard, to a medium yard, Level 3.

15 Q. What was the difference in either
16 privileges or other things in the prison with those
17 two levels?

18 A. The minimum restrict, you can leave the
19 pod any time of the day and go to the yard, go to
20 the gym, go to the library, do whatever. They have
21 a thing called quarters call and they announce it on
22 the intercom, and, "All right, it's time for you to
23 go back to your pod so we can count you guys."

24 When count is cleared, go back to do what
25 you're doing.

1 Level 3, you're in a pod all day, you have
2 certain times to go to the yard or the library.
3 Certain things you've got to get done through the
4 day.

5 Q. Sometime in 1999, did you meet a person
6 named Robert Lovato?

7 A. Yes.

8 Q. How did you meet him or how did you know
9 him?

10 A. From my cousins. My auntie ran a trailer
11 park in Albuquerque. And he had just gotten out, I
12 believe, and his mom lived there at the trailer
13 park. So he went home to his mom's, and his -- my
14 cousins and him knew each other, and that's how I
15 met him. Me and his sister ended up dating after a
16 while.

17 Q. Now, is there a Robert Lovato, the father,
18 and Robert Lovato, the son?

19 A. Yes.

20 Q. Is this the father or the son?

21 A. This is the father.

22 Q. Did you ever have a talk with him about
23 joining gangs?

24 A. We did. And he actually told me to never
25 join the SNM. He said, "Whatever you do, if you go

1 to prison, do not clique up. I'm begging you, do
2 not clique up."

3 Q. What does it mean, "to clique up"?

4 A. That means to get affiliated, get brought
5 in, be known as a member.

6 Q. I take it you didn't take his advice?

7 A. I did not.

8 Q. Tell us about the first time --

9 THE COURT: Mr. Castellano, would this be
10 a good time for us to break for the evening?

11 MR. CASTELLANO: Sure, Your Honor.

12 THE COURT: All right. I appreciate
13 everybody's hard work. Tomorrow is not a snow day.
14 I appreciate everything you've been doing for us.
15 We'll see you at 8:30 in the morning.

16 All rise.

17 (The jury left the courtroom.)

18 THE COURT: All right. Y'all have a good
19 evening. See you in the morning.

20 MS. JACKS: Your Honor, will the Court
21 admonish the witness?

22 THE COURT: Mr. Armenta, don't talk to
23 anyone about your testimony now that you've taken
24 the stand, okay? Don't talk to other witnesses.

25 THE WITNESS: Yes, sir.

1 THE COURT: Or anybody else. Okay?

2 THE WITNESS: Okay, thank you.

3 MR. MAYNARD: Your Honor, there may be
4 some unfinished business. Today is the deadline for
5 some of the redactions and proposed redactions of
6 recordings. I've just filed a brief motion in
7 limine which I hope is explanatory. But does the
8 Court want hard copies of anything? Because the
9 permutations of how -- redactions in a long
10 document -- and I'm just talking about the
11 transcript, not the audio -- there's an infinite
12 number of different ways to do it. And I'm just
13 seeking guidance on how to present our thoughts to
14 the Court.

15 THE COURT: If I were to pick up your
16 brief and then sit there with the transcripts, would
17 I be able to make sense as to what additional
18 redactions you want?

19 MR. MAYNARD: I hope so. I tried to make
20 it simple, although it can get -- well, I hope so.

21 THE COURT: Let me do this. Let me --
22 your brief has been filed?

23 MR. MAYNARD: I made it as short as I
24 could. There are a lot of issues, and I just went
25 through the issues that the Court knows exist in

1 situations like this. And of course, a lot of it is
2 discretionary to the Court. We want to keep it
3 narrow. The Government might want it broader. So I
4 think I communicated the gist of our position to the
5 Court in some specifics.

6 THE COURT: But you've already filed it?

7 MR. MAYNARD: I just filed it five, ten
8 minutes ago.

9 THE COURT: And has Mr. Beck -- I now have
10 in those folders -- I have everything I need to
11 probably sit down and look at it?

12 MR. MAYNARD: Right. The folders for the
13 most part just addressed the Bruton problems. And
14 I'm raising briefly all of the issues relating to
15 probative value versus unfair prejudice, confusion
16 to the jury, trash talk among prison inmates with
17 the F word in every other sentence; and the fact
18 that -- what does it prove? Because I can't see the
19 connections to hardly even to enterprise, much less
20 the Molina homicide.

21 THE COURT: When I look at what you're
22 wanting additional redactions, is it going to say
23 403, Bruton?

24 MR. MAYNARD: Yes.

25 THE COURT: 403, Bruton?

1 MR. MAYNARD: Yes. I'm asking for entire
2 transcripts just to be excluded because I've read
3 through them and I can't see the connections.

4 MR. BECK: I think we'll be playing them
5 in court. It will connect up.

6 THE COURT: Have you seen the brief?

7 MR. BECK: I have.

8 THE COURT: Do you think I'll be able to
9 sit down with what I have?

10 MR. BECK: They asked for full transcripts
11 to be excluded, and in each of those transcripts
12 there is evidence of possession of needles, drug
13 trafficking, fishing in cells, photos, discussion of
14 the Julian Romero incident.

15 THE COURT: But your brief has been filed?

16 MR. BECK: It has.

17 THE COURT: It already has?

18 MR. MAYNARD: And mine has, if you can
19 call it a brief.

20 THE COURT: Is this going to be on behalf
21 of all of the defendants, or am I looking at
22 different ones?

23 MR. MAYNARD: I just filed it a moment
24 ago, and I haven't had time to consult. But we have
25 talked together among the defendants. Our

1 particular issues focus more on 403, 402, you know,
2 issues like that.

3 THE COURT: Okay. All right. Let me do
4 this: Let me take a look at it tonight, maybe in
5 the morning, and maybe I can give you a little
6 better feel in the morning.

7 MR. MAYNARD: Very well.

8 THE COURT: All right. Y'all have a good
9 evening.


10 (Court stood in recess.)
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1 UNITED STATES OF AMERICA
2 STATE OF NEW MEXICO
3

4 C-E-R-T-I-F-I-C-A-T-E

5 I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
6 Official Court Reporter for the State of New Mexico,
7 do hereby certify that the foregoing pages
8 constitute a true transcript of proceedings had
9 before the said Court, held in the District of New
10 Mexico, in the matter therein stated.

11 In testimony whereof, I have hereunto set my
12 hand on this 3rd day of February, 2019.
13

14 
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